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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING:  
Whether there has been a violation of the  
Consumer Loan Act of Washington by:

IMPAC FUNDING CORPORATION dba  
IMPAC LENDING GROUP,

Respondent.

NO. C-07-343-08-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO REVOKE OR SUSPEND LICENSE,  
IMPOSE FINE, ORDER RESTITUTION, AND  
COLLECT EXAMINATION AND INVESTIGATION  
FEES

**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an examination and investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent.**

A. Impac Funding Corporation dba Impac Lending Group (Respondent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on May 21, 2002. Respondent continued to be licensed as a Consumer Loan Company in the State of Washington until Respondent surrendered its license on or about September 10, 2007. Respondent was licensed to conduct the business of a consumer lender at three locations.

1 B. Respondent is a wholly owned subsidiary of Impac Mortgage Holdings.

2 **1.2 Examination.** On or about December 14, 2007, the Department conducted an examination of  
3 the books and records of Respondent for the period of August 1, 2005 through June 30, 2007. The  
4 Department reviewed 65 loan files as part of its examination. The Department found violations of the  
5 Act as outlined below.

6 **1.3 Failure to Provide Loan Servicing Disclosures.** In at least forty loan files, Respondent did  
7 not maintain records sufficient to establish that loan servicing disclosures were provided to borrowers  
8 within three business days of the borrower's loan application, or Respondent did not provide loan  
9 servicing disclosures to borrowers within three business days of the borrowers' loan application.  
10

11 **1.4 Untimely Disclosure of Costs and Fees.** In at least thirty-seven loan files, Respondent did not  
12 maintain records sufficient to establish that Good Faith Estimate (GFE) disclosures or an itemization  
13 of all fees and costs were provided to borrowers within three business days of receipt of a loan  
14 application, or Respondent did not provide GFE disclosures or an itemization of all fees and costs to  
15 borrowers within three business days of receipt of a loan application.

16 **1.5 Failure to Timely Provide Truth in Lending Disclosures or to Disclose the Annual**  
17 **Percentage Rate and Prepayment Penalty.** In at least thirty-seven loan files, Respondent did not  
18 maintain records sufficient to establish that truth in lending (TIL) disclosures or the Annual Percentage  
19 Rate (APR) or prepayment penalty were disclosed to borrowers within three business days of the  
20 borrowers' loan application, or Respondent did not provide TIL disclosures or did not disclose the  
21 APR or prepayment penalty to borrowers within three business days of the borrowers' loan  
22 application.  
23

24 **1.6 Failure to Provide Initial Variable Rate Loan Program Disclosures.** In at least fifteen loan  
25 files, Respondent did not maintain records sufficient to establish that initial variable rate loan program

1 disclosures were provided to borrowers within three business days of the borrowers' loan application  
2 or Respondent did not provide initial variable rate loan program disclosures to borrowers within three  
3 business days of the borrowers' loan application.

4 **1.7 Inaccurate Truth in Lending Disclosures.** In at least seventeen loan files, Respondent  
5 understated the finance charge by more than \$100.

6 **1.8 Use of Line 801 of the HUD 1/1A Settlement Statement for Mortgage Broker Fees.** In at  
7 least ten loans, Respondent used line 801 of the HUD 1/1A Settlement Statement to record mortgage  
8 broker fees.

9 **1.9 Unauthorized Fees.** In at least four junior lien loans, Respondent charged fees other than loan  
10 origination fees or charged loan origination fees in excess of the statutory maximum.

11 **1.10 Repeat Violations.** Respondent did not correct procedures and internal controls as noted in  
12 the prior examination, which was conducted in July 2004. The conduct noted in paragraphs 1.4, 1.5  
13 and 1.7 through 1.9 are repeat findings from the July 2004 examination, the report of which was  
14 previously provided to Respondent in or about December 2004.

15 **1.11 On-Going Investigation.** The Department's investigation into the alleged violations of the  
16 Act by Respondent continues to date.

## 17 **II. GROUNDS FOR ENTRY OF ORDER**

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19 **2.1 Disclosures Other than GFE and TIL.** Based on the Factual Allegations set forth in Section I  
20 above, Respondent is in apparent violation of RCW 31.04.027(6) and (10), WAC 208-620-505, WAC  
21 208-620-510(2) and (3) [prior versions WAC 208-620-120], Regulation X, 24 C.F.R. Section  
22 3500.21(b)(1) (1996), and Regulation Z, 12 C.F.R Section 226.19(b) (2001) for failure to provide loan  
23 servicing disclosures or initial variable rate loan-program disclosures to consumers.  
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1 **2.2 GFE and TIL Disclosures.** Based on the Factual Allegations set forth in Section I above,  
2 Respondent is in apparent violation of RCW 31.04.027(6) and (10), RCW 31.04.102(2) and (3), and  
3 WAC 208-620-505, WAC 208-620-510(1) through (3)[prior versions WAC 208-620-120], WAC 208-  
4 620-512 (2006), Regulation Z, 12 C.F.R. Section 226.18(d) (2001)<sup>1</sup> for failure to provide required  
5 GFE and TIL disclosures within three business days of receiving a loan application or for failure to  
6 provide accurate TIL disclosures to consumers.

7 **2.3 Use of Line 801 of the HUD 1/1A Settlement Statement:** Based on the Factual Allegations  
8 set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(6) and (10), WAC  
9 208-620-505 [prior versions WAC 208-620-120] and Regulation X, 24 C.F.R Section 3500 and  
10 Appendix A (1996) for using line 801 to record mortgage broker fees.

11 **2.4 Unauthorized Fees.** Based on the Factual Allegations set forth in Section I above,  
12 Respondent is in apparent violation of RCW 31.04.105(2) for charging unauthorized fees on junior  
13 lien mortgages.

14 **2.5 Record Keeping.** Based on the Factual Allegations set forth in Section I above, Respondent is  
15 in apparent violation of RCW 31.04.155 and WAC 208-620-520(1) [prior versions WAC 208-620-  
16 120] for failing to maintain sufficient records to enable the Director to determine whether the licensee  
17 is complying with the Consumer Loan Act. In the alternative, Respondent is in apparent violation of  
18 RCW 31.04.145 for failing to comply with the Director's investigatory authority by not fully and  
19 completely complying with the Department's directives.

20 **2.6 Unfair and Deceptive Practices.** Based on the Factual Allegations set forth in Section I  
21 above, Respondent is in apparent violation of RCW 31.04.027(1) and (2) for directly or indirectly  
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25 <sup>1</sup> RCW 31.04.027(6) and (10) and Regulation Z, 12 C.F.R Section 226.18(d) as referenced in this paragraph apply only to the allegations related to inaccurate TIL disclosures, and not to the allegations related to untimely disclosures.

1 employing any scheme, device or artifice to defraud or mislead any borrower or any person or  
2 engaging in any unfair or deceptive practice toward any person.

3 **III. AUTHORITY TO IMPOSE SANCTIONS**

4 **3.1 Authority to Revoke or Suspend License:** Pursuant to RCW 31.04.093(3)(a) and (b), the  
5 Director may revoke a license if a licensee fails to pay any fee due the State of Washington, or fails to  
6 comply with any specific order or demand of the Director lawfully made and directed to the licensee  
7 in accordance with the Act, or violates any provision of the Act or any rule adopted under the Act  
8 either knowingly or without exercise of due care.

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10 **3.2 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
11 up to one hundred dollars per day upon the licensee, its employee, or any other person subject to the  
12 Act for any violation of the Act or failure to comply with any order or subpoena issued by the Director  
13 under the Act.

14 **3.3 Authority to Issue Orders to Pay Restitution:** Pursuant to RCW 31.04.093(5), the Director  
15 may issue an order directing a licensee, its employee, or any other person subject to the Act to make  
16 restitution to a borrower or other person who is damaged as a result of a violation of the Act.

17 **3.4 Authority to Charge Examination Fee and Investigation Fee:** Pursuant to RCW  
18 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the  
19 Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of  
20 sixty-nine dollars and one cent (\$69.01) per staff hour devoted to the examination or investigation, and  
21 shall pay travel costs if the licensee maintains its records outside the state.  
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1 **IV. NOTICE OF INTENTION TO ENTER ORDER**

2 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as  
3 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions  
4 constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205.

5 Therefore, it is the Director's intention to ORDER that:

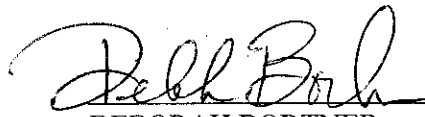
- 6 4.1 Respondent Impac Funding Corporation's license to conduct the business of a Consumer  
7 Loan Company be suspended or revoked;
- 8 4.2 Respondent Impac Funding Corporation pay a fine, which as of the date of this Statement of  
9 Charges is \$100,000 for the violations set forth above;
- 10 4.3 Respondent Impac Funding Corporation refund all fees that inured to Respondent's benefit on  
11 the HUD 1/1A settlement statement or equivalent on all loans referred to in paragraphs 1.3  
12 through 1.6 and 1.9 above;
- 13 4.4 Respondent Impac Funding Corporation refund to the consumers referenced in paragraph 1.7  
14 the difference between the finance charge disclosed and the actual finance charge on the loan;
- 15 4.5 Respondent Impac Funding Corporation pay an examination fee totaling \$15,882.53 for the  
16 December 2007 examination, which consists of a \$11,455.66 for staff hours and \$4,426.87 in  
17 travel fees devoted to the examination;
- 18 4.6 Respondent Impac Funding Corporation pay an investigation fee which as of the date of this  
19 Statement of Charges totals \$5,037.73 calculated at \$69.01 per hour for seventy staff hours  
20 devoted to the investigation;
- 21 4.7 Respondent Impac Funding Corporation maintain records in compliance with the Act and  
22 provide the Director with the location of the books, records, and other information relating to  
23 Respondent FMC and Respondent Middleman consumer loan company business, and the  
24 name, address, and telephone number of the individual responsible for maintenance of such  
25 records in compliance with the Act.

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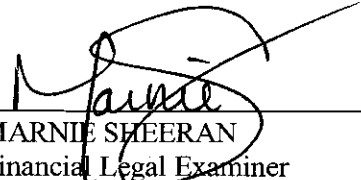
**V. AUTHORITY AND PROCEDURE**

This Statement of Charges and Notice of Intention to Enter an Order to Revoke or Suspend License, Impose Fine, Order Restitution, and Collect Examination and Investigation Fees (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 5<sup>th</sup> day of September, 2008.


  
DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

  
MARNIE SHEERAN  
Financial Legal Examiner



Approved by:

  
JAMES R. BRUSSELBACK  
Program Manager and Enforcement Chief