

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

**CONSUMER PROTECTION, COMPETITION,
AND TOBACCO ENFORCEMENT**
2012 ANNUAL REPORT



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Mission Statement

The Attorney General enforces Idaho's consumer-related laws, including the Consumer Protection Act, the Competition Act, the Telephone Solicitation Act, the Charitable Solicitation Act, the Consumer Foreclosure Protection Act, and the Credit Report Protection Act. These laws protect consumers, businesses, and the marketplace from unfair or deceptive acts and practices. The Attorney General seeks to fulfill this charge efficiently and economically through education, mediation, and enforcement.

In addition to enforcing consumer protection statutes, the Attorney General enforces and defends the State's Master Settlement Agreement with the tobacco industry. The Legislature delegated to the Attorney General the duty of enforcing the Tobacco Master Settlement Agreement Act, the Tobacco Master Settlement Agreement Complementary Act, and the Prevention of Minors' Access to Tobacco Act. The Master Settlement Agreement and its associated statutes help promote the public health and protect the fiscal soundness of the State.

INTRODUCTION

Each year Attorney General Lawrence Wasden reports to the public about the activities of his office in the areas of consumer protection, competition, telephone solicitations, charitable solicitations, and tobacco enforcement. This report highlights the legislative and enforcement actions that the Attorney General undertook in 2012 and provides updates of the office's significant and ongoing litigation. In addition, the report identifies and discusses the top ten categories of which consumers filed complaints in 2012. The report also summarizes the office's 2012 consumer outreach and education efforts.



Enacted on July 1, 1971, the Idaho Consumer Protection Act (ICPA) protects consumers, businesses, and Idaho's marketplace from unfair competition and deceptive practices in trade and commerce. Over the years, the ICPA has undergone changes and additions, most recently the codification of section 48-603F, banning for-profit mortgage modification companies. The Attorney General is committed to preserving the integrity of Idaho's marketplace, and his proactive enforcement and consumer education efforts will ensure the continuing success of the ICPA in the coming years.

ANNUAL ACTIVITIES SUMMARY

Consumer Complaints & Contacts

- Top Consumer Complaints: Loans and Mortgage Lenders & Motor Vehicles
- Number of Consumer Complaints Filed: 1,131
- Number of Other Consumer Contacts Logged: 10,562
- Total Dollar Losses Reported by Consumers: \$2,271,659

Enforcement Actions & Legislative Initiatives

- Negotiated and implemented \$100 million Idaho mortgage foreclosure settlement
- Litigated and settled multiple cases involving drug manufacturers' average wholesale prices as well as the marketing of their drug products
- Continued defense of Idaho's tobacco Master Settlement Agreement payments and the constitutionality of Idaho's tobacco sales laws
- Litigated and investigated cases against cigarette wholesalers violating or potentially violating Idaho's tobacco sales laws
- Resolved investigations of a deceptive website targeting veterans' education benefits, a misleading auto warranty promotion, and an out-of-state law firm's deceptive solicitation related to mortgage foreclosure
- Continued litigation of price-fixing claims, including the filing and partial settlement of a lawsuit alleging price fixing in the electronic books market

Consumer Restitution & Financial Issues

- Recovered \$8,497,948 in consumer restitution. This amount equals \$12.74 for each taxpayer dollar appropriated for consumer operations in FY 2012 (\$666,800)
- Recovered—for the 21st straight year—more money for residents and businesses than the Legislature has appropriated from the general fund for consumer protection operations
- Recovered \$16,468,334 in civil penalties, fees, and costs
- Received \$24,922,224 under the MSA, totaling \$329,936,081 received since the MSA was finalized in 1998
- Transferred \$1,928,900 in unspent consumer protection account funds to the general fund in FY 2012. Since 2000 the office has transferred \$18,054,900 in consumer funds to the general fund

APPLICABLE LAWS

Consumer Protection

- **Idaho Consumer Protection Act**, Title 48, Chapter 6, Idaho Code
- **Idaho Rules of Consumer Protection**, IDAPA 04.02.0100 et seq.
- **Idaho Lemon Law**, Title 48, Chapter 9, Idaho Code
- **Idaho Motor Vehicle Service Contract Act**, Title 49, Chapter 28, Idaho Code
- **General Contractor Disclosure Law**, Idaho Code § 45-525
- **Consumer Protection Foreclosure Act**, Title 48, Chapter 16, Idaho Code
- **Home Loan Modification Review Notice Law**, Idaho Code § 45-1506C
- **Credit Report Protection Act**, Title 28, Chapter 52, Idaho Code
- **Loan Broker Law**, Title 26, Chapter 25, Idaho Code
- **Pyramid Promotional Schemes**, Idaho Code § 18-3101
- **Security Breaches**, Title 28, Chapter 51, Idaho Code
- **Legal Service Expense Plans Law**, Idaho Code § 41-114B

Competition

- **Idaho Competition Act**, Title 48, Chapter 1, Idaho Code

Charities & Charitable Assets

- **Idaho Charitable Solicitation Act**, Title 48, Chapter 12, Idaho Code
- **Charitable Trust Assets**, Idaho Code §§ 67-1401 & 68-1204
- **Uniform Prudent Management of Institutional Funds Act (notice)**, Title 33, Chapter 50, Idaho Code

Telephone Solicitations

- **Idaho Telephone Solicitations Act**, Title 48, Chapter 10, Idaho Code
- **Idaho Pay-Per-Telephone Call Act**, Title 48, Chapter 11, Idaho Code
- **Idaho Rules of Telephone Solicitation and Pay-Per-Telephone Call Services Rules**, IDAPA 04.02.0200 et seq.

Tobacco

- **Idaho Tobacco Master Settlement Agreement Act**, Title 39, Chapter 79, Idaho Code
- **Idaho Tobacco Master Settlement Agreement Complementary Act**, Title 39, Chapter 84, Idaho Code
- **Idaho Tobacco Master Settlement Agreement Complementary Act Rule**, IDAPA 04.20.0100
- **Prevention of Minors' Access to Tobacco Act**, Title 39, Chapter 57, Idaho Code
- **Reduced Cigarette Ignition Propensity Act**, Title 39, Chapter 89, Idaho Code

LEGISLATIVE INITIATIVES

In February 2012, the Attorney General announced a comprehensive settlement with the five largest mortgage servicers. Part of the settlement was a \$13 million payment to the State.

Shortly after the settlement was approved, the Attorney General proposed House Bill 703, which the Legislature adopted. The bill appropriated funds from the settlement for various housing-related purposes:

- \$50,000 to the Office of the Attorney General to assist Idaho homeowners in understanding Idaho's foreclosure laws, the new mortgage servicing standards, and available modification programs.
- \$120,000 to the Idaho State Bar's Volunteer Lawyers Program to provide pro bono representation to Idaho homeowners facing foreclosure.

- \$120,000 to Idaho Legal Aid Services to help low-income families negotiate modifications, obtain deficiency waivers, and assist them with making sound decisions about home loans.
- \$110,000 to housing-related entities and services statewide to provide mortgage delinquency and default resolution counseling to Idaho homeowners, as well as homebuyer education.
- \$100,000 to the Community Action Partnership Association of Idaho to assist homeowners transition from foreclosure to safe and affordable housing.



CONSUMER ENFORCEMENT ACTIVITIES

★ *CONSUMER PROTECTION* ★

Enforcement of Idaho’s consumer laws protects the free and competitive market and ensures a level playing field for all businesses. A marketplace unfettered by false, deceptive, and misleading practices and free of unreasonable restraints of trade will yield the best allocation of Idaho’s economic resources, the lowest prices, the highest quality, and the greatest material progress. Pursuant to his authority under the Idaho Consumer Protection Act, the Attorney General undertook consumer protection matters in 2012 that are noteworthy in scope and impact.

NATIONAL MORTGAGE FORECLOSURE SETTLEMENT

In October 2010, the Attorney General joined a multistate investigation into allegations that mortgage loan servicers filed forged foreclosure documents with courts in judicial foreclosure states. Commonly referred to as “robo-signing,” the servicers and their agents allegedly had employees forge thousands of affidavits and other foreclosure documents while outside the presence of a notary. In addition, servicers allegedly pursued foreclosures without having documentation to establish the servicers’ authority to foreclose.

In April 2012, the Attorney General and the Idaho Department of Finance, 48 other states and federal authorities entered into consent judgments with five loan servicers, resolving mortgage origination, servicing, and foreclosure

practices claims. The consent judgments were filed in the U.S. District Court of the District of Columbia and their terms became fully effective in October 2012. The settlement involves the mortgage servicing affiliates of the following five bank holding companies, along with their national banks:

- Bank of America Corporation
- Citigroup, Inc.
- J.P. Morgan Chase & Company
- Ally Financial, Inc.
- Wells Fargo & Company

These settling servicers handle approximately 65% of the outstanding mortgages in the United States.

Effective for three years, the National Mortgage Settlement requires the servicers to comply with strict loan servicing standards that:

- Return integrity and accuracy to the foreclosure process
- Enhance loss mitigation protection for borrowers
- Restrict servicing fees
- Implement measures to deter community blight

With respect to Idaho, the five settling loan servicers have reported providing 1,653 Idaho homeowners with \$96,404,176 in mortgage relief since June 2012.

In 2013, thousands of Idahoans who lost their homes to foreclosure will receive payments from the settling servicers collectively totaling almost \$10 million.

The State also received a payment of \$13 million from the five servicers. The Idaho Legislature appropriated \$500,000 to the Office

of the Attorney General to address housing and foreclosure matters.

The five servicers pay the costs to monitor and enforce the National Mortgage Settlement. A Settlement Monitor—appointed by the states—tracks the servicers’ implementation of the new servicing standards and reviews and investigates noncompliance complaints from third-parties. The Monitor also publishes quarterly public reports about the progress of the servicers’ loan restructuring and refinancing programs. The Monitor’s reports are available at www.mortgageoversight.com. The Monitor works with any noncompliant servicer to establish and then oversee corrective plans, or, if necessary, make recommendations for additional corrective actions. If the servicer continues to fail to meet its obligations under the Settlement, the D.C. District Court may take action by imposing civil penalties or injunctive relief.

PHARMACEUTICAL MANUFACTURERS ~ AVERAGE WHOLESALE DRUG PRICING

Idaho Medicaid provides health care services, including prescription drugs, to low-income Idahoans. Since early 2007, the Attorney General has represented the State of Idaho in lawsuits against drug manufacturers based on the companies’ alleged false and

deceptive average wholesale price reporting practices.

By law, Idaho Medicaid must reimburse pharmacies and hospitals at the “estimated acquisition cost” of the drug. As a basis for determining the estimated acquisition cost of a

drug, Idaho Medicaid has primarily used the drug’s “average wholesale price” as reported by the drug’s manufacturer. The Attorney General alleges that the defendant drug manufacturers reported falsely inflated average wholesale prices, which resulted in the State of Idaho paying health care providers millions of dollars more than they should have received.

In 2012, the Attorney General settled with nine drug manufacturers and recovered more than \$9.4 million to reimburse the State and its taxpayers for the inflated prices. The settlements also reimbursed the Attorney

General’s fees and costs for prosecuting the cases. In addition to the financial component of the settlements, the settling manufacturers also must report confidential pricing information for their drugs, which helps Idaho Medicaid more accurately reimburse Idaho’s health care providers.

Since 2007, the Attorney General has recovered \$25 million from similar settlements with manufacturers.

The chart below summarizes the amount of money each settling defendant manufacturer paid in 2012:

DRUG MANUFACTURERS (DEFENDANTS)	SETTLEMENT
Aventis Pharmaceuticals, Inc.	\$828,500
Forest Laboratories, Inc.	\$790,000
Mylan Inc. and Mylan Pharmaceuticals, Inc.	\$625,000
Pfizer Inc. and Pharmacia Corp.	\$2,900,000 (funds to be received in 2013)
SmithKline Beecham Corp., d/b/a GlaxoSmithKline	\$2,600,000
Watson Pharma, Inc. and Watson Pharmaceuticals, Inc.	\$1,700,000
2012 TOTAL	\$9,443,500

The Attorney General continues to represent the State of Idaho in other average

wholesale drug-pricing lawsuits. At the end of 2012, lawsuits were pending against Abbott

Laboratories and Novartis Pharmaceuticals Corp. relating to their reporting of allegedly

false inflated average wholesale prices.

PHARMACEUTICAL MARKETING & MANUFACTURING

The Attorney General reached four settlements in 2012 with drug manufacturers related to the marketing and manufacturing of their products.

ABBOTT LABORATORIES INC.

The Attorney General settled with Abbott Laboratories regarding the marketing of its drug Depakote. The Attorney General alleged that Abbott engaged in illegal off-label promotion of the drug. "Off label" means a drug was promoted for uses or conditions that the Food and Drug Administration ("FDA") has not approved. Depakote is approved by the FDA to treat certain types of seizure disorders and to prevent migraines. The Attorney General alleged that Abbott promoted the drug for treating schizophrenia, agitated dementia, and autism. The settlement required Abbott to change its marketing practices and to pay the State of Idaho \$1,220,050.

JANSSEN PHARMACEUTICALS, INC. AND JOHNSON & JOHNSON

The Attorney General settled with Janssen and Johnson & Johnson regarding the marketing of its antipsychotic drugs Risperdal, Risperdal Consta, Risperdal M-Tab, and Invega. The Attorney General alleged that Janssen and

Johnson & Johnson marketed the drugs for off-label uses, targeting patients with Alzheimer's disease, dementia, depression and anxiety. The settlement changed how Janssen promotes and markets Risperdal and other similar antipsychotic medications. The companies also paid the State of Idaho \$2,847,890.

GLAXOSMITHKLINE LLC.

The Attorney General settled with GlaxoSmithKline regarding the marketing of Avandia, a drug approved for type 2 diabetes. The Attorney General alleged that GlaxoSmithKline claimed the drug had benefits it did not have. The settlement required GlaxoSmithKline to change its marketing practices and pay the State of Idaho \$1,330,127.

PFIZER INC

The Attorney General settled with Pfizer regarding its alleged misleading marketing of Zyvox and Lyrica. Zyvox is an antibacterial agent approved by the FDA to treat certain types of infections and complicated skin and skin

structure infections. Pfizer allegedly promoted the drug using unsubstantiated, which broadened Zyvox's FDA-approved indications. Additionally, the Attorney General alleged that Pfizer promoted Lyrica, which is approved only

to treat certain types of neuropathy and fibromyalgia. The settlement required Pfizer to change how it markets these drugs, and to pay the State of Idaho \$732,118. These funds were received in January 2013.

OTHER CONSUMER PROTECTION CASES

GIBILL.COM

The Attorney General settled with QuinStreet, Inc., which operates websites that generate sales leads primarily for the for-profit schools industry. The Attorney General alleged that QuinStreet's website "GIBILL.COM" was deceptive and misleading in giving the appearance that the site was operated, owned or endorsed by the United States Government or military, and that veterans could use their benefits only at the schools advertised on the website. The settlement required QuinStreet to relinquish control of the domain "GIBILL.COM" to the U.S. Department of Veteran Affairs, make certain disclosures on its other websites, and pay the State of Idaho \$100,000 for the Attorney General's investigation and legal costs.

SKECHERS, USA, INC.

The Attorney General settled with Skechers USA, Inc., the manufacturer of Shape-ups, Tone-ups and Skecher Resistance

Runner shoes. The Attorney General alleged that Skechers made unsubstantiated claims as to the health benefits of these shoes. The settlement prevents Skechers from making unsubstantiated claims and allows consumers to apply for partial refunds of the shoes. Skechers also paid \$76,152 to the State of Idaho for the Attorney Generals' investigation and legal costs.

NCO FINANCIAL SYSTEMS, INC.

Debt collector NCO Financial Systems, Inc. (NCOF) settled with the Attorney General in February 2012, resolving allegations that it violated state and federal debt collection laws. Over the next three years, NCOF will pay restitution of up to \$50,000 to Idaho consumers. The settlement also prohibits NCOF from:

- collecting on settled or discharged debts;
- placing multiple calls to consumers over a short period of time;
- threatening legal action without authority; or

- using false or misleading representations to collect debts.

The Attorney General received \$26,562.50 from NCOF to pay for expenses incurred during the investigation.

CORVUS LAW GROUP, LLC

Under the terms of a March 2012 settlement agreement, the law firm Corvus Law Group, LLC, is prohibited from misrepresenting Idaho consumers' eligibility to participate in multi-plaintiff lawsuits against their mortgage servicers. Corvus Law Group may not use deceptive advertising methods, such as envelopes that appear to originate from the government and forms claiming that the recipient of the solicitation is a party to a lawsuit or a settlement. In its legal services solicitations to Idaho consumers, the firm must disclose the name and Idaho State Bar number of at least one Idaho licensed attorney who will represent the consumer. Corvus Law Group also paid \$3,000 to reimburse the Attorney General for the cost of the investigation.

SAM CONSALVI/SECTOR MARKETING

Sam Consalvi, the owner of Sector Marketing, signed a consent judgment with the Attorney General in March 2012, agreeing to pay restitution to small businesses that paid Consalvi for advertising he never provided. The consent judgment prohibits Consalvi from engaging in ad sales in Idaho and imposes a \$20,000 civil penalty if he violates the settlement. Consalvi also agreed to pay \$800 in attorney fees to reimburse the Attorney General for his investigative costs.

US FIDELIS

The Attorney General and 11 other state attorneys general settled with US Fidelis, a bankrupt vehicle service contract dealer, in July 2012, following an investigation into allegations that the company routinely misled consumers about the benefits of purchasing its auto service contract. This settlement, along with a prior settlement with the service contract obligor Warrantech, creates a \$14.1 million Consumer Restitution Fund.

★ COMPETITION ACT ★

The purposes of Idaho's Competition Act are to maintain and promote economic competition in Idaho commerce, provide the benefits of that competition to consumers and businesses in the state, and establish efficient and economical procedures to accomplish these purposes and policies. Throughout 2012, the Attorney General exercised his enforcement responsibilities under the Competition Act and

continued to litigate several matters relative to claims brought under the Competition Act. He also announced three settlements.

DYNAMIC RANDOM ACCESS MEMORY MANUFACTURER LITIGATION

Involving one of the largest price-fixing cartels ever discovered, the dynamic random access memory (DRAM) litigation involves 13 manufacturers and represents millions of dollars in damages to purchasers and end user consumers, including businesses, state agencies, and political subdivisions.

Personal computers, servers, workstations, and other products have semiconductors (i.e., memory chips) known as dynamic random access memory (DRAM). DRAM holds temporary instructions and data available for quick access while the device is in use. Electronic products with DRAM are purchased by consumers, businesses, schools and government bodies throughout the world.

The defendant DRAM manufacturers allegedly discussed and coordinated the prices they charged to consumers and to the large computer manufacturers. In June 2002, the

AMERICAN EXPRESS COMPANY, MASTERCARD, & VISA LITIGATION

Along with the United States Department of Justice and other state attorneys general, the Attorney General filed a civil

United States Department of Justice launched a criminal investigation into the manufacturers.

To recover restitution and damages for Idaho, in 2006 the Attorney General joined a multistate lawsuit against 13 DRAM manufacturers and their subsidiaries, claiming violations of the Competition Act and federal antitrust law. The lawsuit alleges that, as a result of the manufacturers' price fixing, Idaho consumers, businesses, and state and local governmental agencies paid more for their computers, servers, and other electronic devices than they would have paid had there not been any price fixing.

The Attorney General and the defendants have now entered into settlements that include restitution of \$260 million in the participating jurisdictions. The restitution is on behalf of consumers, businesses, the State of Idaho and certain local governmental agencies. A claims process, which is being implemented, will determine the amounts to be distributed to the various harmed parties.

antitrust lawsuit in the Eastern District of New York against Visa, MasterCard, and American Express. The lawsuit alleges that the companies, which operate the three largest credit card networks in the country, require merchants to

restrict the types of discounts provided to credit card customers.

Every time a consumer uses a credit card to buy something from a merchant, that merchant pays a fee that is passed on to consumers through higher prices. In 2009 alone, the three credit card companies and their affiliate banks collected more than \$35 billion in these fees. Visa, MasterCard, and American Express went beyond imposing fees and allegedly prevented merchants from offering consumers any cost-saving options such as discounts or rewards for using less expensive forms of payment. Restrictive payment rules inhibit price competition among credit card networks. When merchants face increased business costs, consumers pay higher prices.

The attorneys general and USDOJ reached a settlement with Visa and MasterCard in the fall of 2010. The court approved the settlement in 2011. Because of the settlement, companies and retailers may provide their customers with more options and cost saving incentives. Merchants also may inform their customers which cards will lower business costs the most, allowing merchants to pass these savings on to consumers.

Litigation against American Express remains pending. The Attorney General asserts that American Express maintains the industry's most restrictive merchant rules and has the

highest fees of any credit card company. Presently, American Express's rules prohibit any of the millions of merchants that accept American Express from taking advantage of the discounts and rebates that the Visa and MasterCard settlement would permit.

E-BOOKS PRICE FIXING LITIGATION AND SETTLEMENT

The Attorney General joined with the attorneys general of 49 states in an antitrust lawsuit against Apple, Inc., and five of the largest U.S. book publishers: Hachette Book Group (USA), HarperCollins Publishers L.L.C., Simon & Schuster Inc., Holtzbrinck Publishers L.L.C. d/b/a MacMillan, and Penguin Group (U.S.A.), Inc.

The lawsuit alleges that the publishers conspired to raise the retail price of E-books in two significant ways. First, in order to gain leverage in retail price negotiations with distribution outlets such as Amazon, four of the publishers agreed in late 2009 to delay publication of certain front-list E-books for several months following each books print release. Second, around January of 2010, Apple began to facilitate an agreement among the publishers to change the E-book distribution system from a Wholesale-Retail Model to an Agency Model. Under the Wholesale-Retail Model, distributors such as Amazon or Barnes & Noble set prices and sold E-books to

consumers. The Agency Model allowed the publishers to set E-book prices and sell E-books directly to consumers.

In June 2012, the Attorneys General reached a settlement agreement with Hachette Book Group (USA), HarperCollins Publishers L.L.C., and Simon & Schuster Inc. The settling publishers agreed to pay more than \$69 million to consumers nationwide. Collectively, Idaho consumers were entitled to receive up to \$347,000.00 as compensation for illegal price fixing of E-books purchased by Idaho consumers between April 1, 2010 and May 21, 2012. The court approved the settlement in September 2012. The lawsuit continues against Apple, Inc., Holtzbrinck Publishers L.L.C. d/b/a MacMillian and Penguin Group (U.S.A.), Inc. A trial is currently scheduled for June 2013.

MUNICIPAL BOND DERIVATIVES INVESTIGATION

The Attorney General has participated in an ongoing nationwide investigation of alleged anticompetitive and fraudulent conduct in the municipal bond derivatives industry. Municipal bond derivatives are contracts that tax-exempt issuers use to reinvest proceeds of bond sales until the funds are needed, or to hedge interest-rate risk. The Attorney General has settled five matters from 2010 through 2012, involving Bank of America, UBS AG, JP Morgan, GE Funding Capital Market Services, Inc., Wachovia. To date, the Attorney General has secured more than \$850,000 in restitution as a result of these settlements, which various Idaho entities are entitled to claim.

★ TELEPHONE SOLICITATIONS AND REGISTRATIONS ★

Recognizing the special risks and the potential for abuse of telephones for commercial solicitation, the Legislature enacted the Idaho Telephone Solicitations Act (ITSA), title 48, chapter 10, Idaho Code, in 1992. The ITSA safeguards the public against deceit and financial hardship, encourages competition and fair dealings among the telemarketing industry, and prohibits telemarketers from using representations that have the tendency or capacity to mislead purchasers.

Telephone solicitors must register with the Attorney General's Consumer Protection Division before soliciting in Idaho, and the telemarketer's failure to register renders any sales contract entered into during the unlawful telephone solicitation unenforceable by the telemarketer. In 2012 the Division registered 76 telemarketers, a slight decrease from 2011.

Idaho's Do Not Call law, which established the state's "no telephone solicitation contact list," predates the National Do Not Call Registry and subjects violators to civil penalties of up to \$5,000 per violation. When the National Registry was created in 2004 all Idaho numbers registered on the Idaho-only list were transferred to the Registry. Presently, the Registry contains 1,088,730 Idaho telephone numbers. The Attorney General has one telemarketing enforcement action to report.

ALL AMERICAN SPORTS.

All American Sports, an advertising company located in Caldwell, entered into a settlement agreement with the Attorney General to resolve complaints about the company's telemarketing practices. In addition to calling consumers without registering with the Attorney General, All American Sports sent invoices to consumers to collect debts that consumers

allegedly did not owe. The settlement prohibits All American Sports from sending false invoices and from conducting telephone solicitations unless it registers with the Attorney General. All American Sports also paid the Attorney General \$400 to reimburse him for his investigative costs. A civil penalty of \$5,000 is held in abeyance pending the company's compliance with the settlement agreement.

★ CHARITABLE SOLICITATIONS AND TRUST ASSETS ★

Idaho law assigns to the Attorney General the duty of enforcing the Idaho Charitable Solicitations Act (ICSA). The ICSA prohibits false, deceptive, and misleading charitable solicitations. This year, the Attorney General did not undertake any actions to enforce the ICSA.

In addition to overseeing charitable solicitations, the Attorney General has a statutory duty to ensure that charitable or public trust assets are utilized according to the charitable purpose of the organization, or, if applicable, according to the donor's specified instructions. The Attorney General's responsibility often includes reviewing requests to modify the terms of a charitable trust or to dissolve a trust that has become imprudent or impracticable. When necessary, the Attorney General intervenes in actions to prevent private parties from unlawfully dissipating charitable trust assets.

This year, the Attorney General reviewed a number of modification requests from trustees. The Attorney General also initiated an investigation into a large Idaho charity that closed under unusual circumstances. That investigation is ongoing.

IN RE ESTATE OF DIANA K. TIBBETS

Early in 2012, the Attorney General intervened in a Washington County estate case involving the estate of Diana K. Tibbets. Ms. Tibbets' brother had filed a lawsuit objecting to the validity of her holographic will, claiming he was entitled to the property she had designated to benefit the animals of Idaho.

The personal representative of Ms. Tibbets' estate and the Attorney General agreed that Ms. Tibbets intended to establish a charitable trust. The parties agreed that the property (mostly land) would be sold and the

proceeds would fund a scholarship endowment for students enrolled in the University of Idaho's animal sciences program. The brother objected to this plan.

The Washington County Magistrate Court ruled against the brother and found that Ms. Tibbets—through her holographic will—established a valid charitable trust. The brother has appealed the magistrate's decision to the Washington County District Court. All parties have submitted their briefs, but the court has not yet scheduled the appeal for oral argument.

TOBACCO

The Attorney General enforces Idaho's Tobacco Master Settlement Agreement Act, the Tobacco Master Settlement Agreement Complementary Act, the Prevention of Minors' Access to Tobacco Act, and the Reduced Cigarette Ignition Propensity Act. Enforcement of these laws includes prosecuting violators and defending the laws against constitutional challenges in state and federal court actions. In addition to his responsibilities under these state statutes, the Attorney General enforces and defends the State's Master Settlement Agreement (MSA) with various tobacco companies.

The MSA has had a substantial impact on cigarette consumption in the United States. Since the MSA was signed in 1998, cigarette consumption has dropped nationally more than 37%. Youth smoking rates also have declined nationally according to a study sponsored by the National Institute on Drug Abuse. In Idaho the smoking rate has decreased among adults from 20.3% in 1998 to 15.7% in 2010. In 1993 the youth smoking rate in Idaho was 27.3%. By 2011 that rate had decreased to 14.3%.

Attorney General Wasden serves as Chair of the American Legacy Foundation, which was created pursuant to the MSA to reduce youth tobacco smoking and to prevent smoking-related disease in the United States. The American Legacy Foundation developed, and continues to manage, the largest

youth smoking prevention campaign in the country—truth[®]—with results that have proven successful and effective.



MASTER SETTLEMENT AGREEMENT AND IDAHO TOBACCO LAWS

MASTER SETTLEMENT AGREEMENT

The 1998 Tobacco Master Settlement Agreement (MSA), the largest civil litigation settlement in U.S. history, resolved litigation brought by 46 states in the mid-1990s against the four largest U.S. cigarette manufacturers (Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard), along with the industry's trade associations and PR firms. The primary purposes of the MSA are to stop the tobacco industry's targeting of children and denials of the addictiveness of nicotine and the negative health consequences of smoking, while also reimbursing the States for money spent on treating individuals with tobacco-related illnesses. Since the MSA was finalized in 1998, some 40 additional tobacco companies have joined the MSA and are bound by its terms.

As required by the MSA, each year the tobacco industry pays the State of Idaho a sum of money, which is deposited into the Idaho

Millennium Fund. During 2012, the tobacco industry paid \$24,922,224 to Idaho, bringing Idaho's total payments since entry of the MSA to \$329,936,081. Additional information about the MSA, the specific advertising restrictions that the MSA places on the tobacco industry, and details about how Idaho's tobacco payments are allocated is available on the Attorney General's tobacco webpage at www.ag.idaho.gov/tobacco/tobaccoIndex.html.

The Attorney General continues to defend the MSA and Idaho's tobacco laws in state and federal lawsuits brought by tobacco manufacturers and distributors. The lawsuits assert that the MSA, as well as Idaho's MSA and Complementary Acts, violate constitutional provisions or are preempted by federal law. To date, the Attorney General has defeated challenges to these Idaho laws in actions arising in Idaho, California, Washington, D.C., Oregon, Kentucky, and New York.

Under Idaho's Complementary Act, the Attorney General maintains and administers a directory of tobacco manufacturers and brands that are in compliance with Idaho's MSA and Complementary Acts. At present, the Attorney General has certified 34 tobacco manufacturers and 152 tobacco brands. The directory is available on the tobacco webpage of the Attorney General's website.

The Attorney General has been successfully litigating with the tobacco industry over the State's enforcement of Idaho's MSA Act. The industry had disputed the effectiveness of the State's efforts and sought to eliminate potentially tens of millions of dollars of Idaho's tobacco MSA payment. After several years of litigation, the tobacco companies have announced that they have decided to drop their challenge to Idaho's payment. This litigation required the Attorney General's commitment of thousands of hours of staff time and tens of

PREVENTION OF MINORS' ACCESS TO TOBACCO

The Attorney General is part of an ongoing multistate enforcement effort related to the retail sale of cigarettes and tobacco products to minors. Settlements with retail and convenience stores help accomplish this goal. The Attorney General has entered into such agreements with Kroger, Wal-Mart, Walgreens,

thousands of dollars of litigation expenses. Ultimately, Idaho demonstrated its assiduous enforcement efforts by producing thousands of documents and by filing multiple pleadings with the arbitration panel, all of which evidenced and thoroughly explained the State's diligent enforcement activities. Idaho is one of only 12 states to be dismissed from the litigation by the tobacco companies. Because of the Attorney General's commitment to enforcing the MSA, Idaho's MSA payments at issue are being protected and will not be reduced.

Idaho continues with other litigation to obtain moneys the tobacco companies improperly withheld under the MSA. This litigation includes the Office of the Attorney General acting as liaison counsel in a matter with Liggett Group, Inc., with respect to millions of dollars in moneys Liggett has improperly withheld from the states.

and RiteAid stores and with gas station and convenience store chains operating under the Chevron, ConocoPhillips, ExxonMobil, and BP brand names. Preliminary research indicates that youths' access to cigarettes and use of tobacco products has decreased because of the retail store settlements, as well as the Attorney General's ongoing monitoring of the stores' compliance and the Attorney General's

continued enforcement of Idaho's tobacco sales laws. As additional data about youth smoking becomes available, the Attorney General will

evaluate and focus the office's enforcement and education efforts.

TOBACCO ENFORCEMENT

NATIVE WHOLESALE SUPPLY COMPANY

The Attorney General and the Idaho State Tax Commission filed a lawsuit against Native Wholesale Supply Company, an unlicensed cigarette wholesaler in Perrysburg, New York, alleging Native Wholesale Supply illegally sold Seneca and Opal brand cigarettes in Idaho and sold cigarettes at wholesale without the required Idaho wholesale tax permits. The sale of Seneca and Opal brand cigarettes in Idaho was prohibited. Despite its knowledge of the 2002 prohibition against the

selling of Seneca and Opal brand cigarettes, Native Wholesale Supply sold more than 100 million illegal cigarettes in Idaho.

The Attorney General and the Idaho State Tax Commission prevailed in their lawsuit before the District Court and obtained a permanent injunction against Native Wholesale Supply, prohibiting the company from selling unlawful cigarettes in Idaho. Native Wholesale Supply has appealed the case to the Idaho Supreme Court. The case was argued to the Court in December 2012.

RJR REYNOLDS TOBACCO COMPANY V. FOOD AND DRUG ADMINISTRATION

Under the Family Smoking Prevention and Tobacco Control Act, the Food and Drug Administration (FDA) issued regulations requiring cigarette manufacturers to display on their cigarette packages "color graphics depicting the negative health consequences of smoking" and to include one of several textual warnings. Congress mandated that the graphics occupy 50% of the package's front and back. The FDA's rule requires packages to include

images and warnings designed to truthfully inform consumers about the dangerous, and often fatal, consequences of smoking. Packages also must display a telephone number (1-800-QUIT-NOW) for consumers to call to obtain information about smoking cessation.

Based on alleged violations of their First Amendment rights, several tobacco manufacturers brought a motion to enjoin the FDA from enforcing the new regulations. In early November 2011, the United States District Court for the District of Columbia granted the

manufacturers' motion, and the FDA appealed the court's decision to the U.S. Court of Appeals for the District of Columbia Circuit. The Attorney General led 24 states on an *amicus curiae* brief that refutes the tobacco industry's

arguments in the case. The court, in a split decision, however, ruled in the tobacco company's favor. This ruling is now on appeal to the United States Supreme Court.

MEDIATION AND CONSUMER CONTACTS

The Attorney General's Consumer Protection Division accepts written complaints from consumers who wish to report an alleged violation of a consumer-related law the Attorney General enforces. The Division has three consumer specialists and a housing specialist who process incoming complaints for the Division's informal dispute resolution program.

If appropriate, the complaint is sent to the identified business with a request for a written response. A member of the Division's legal staff reviews the response and decides whether to close the complaint as "resolved" or to refer the matter to the Division's enforcement team for further consideration. While the Attorney General does not force a business to participate in the dispute resolution process, most businesses, understanding the benefits of addressing their customers' concerns, voluntarily respond to complaints.

Before 2009, the Division considered all complaints for the office's informal dispute

resolution program. Increasingly limited resources required the Division to revise its policies and procedures for its complaint intake, review, and mediation process in late 2009. The Division now provides its mediation services primarily to complaints from Idaho consumers. However, the Division may mediate out of state complaints if (a) the transaction occurred during the consumer's visit to Idaho; (b) the transaction involves a well-established Idaho company; or (c) the Attorney General already has an enforcement action pending against the business.

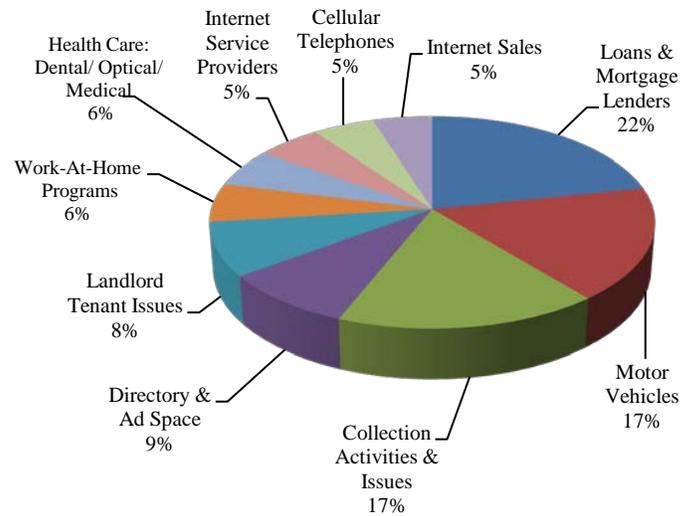
In 2012, the Division mediated 888 complaints, resulting in a recovery of \$185,105 for consumers. The Division processed 243 additional complaint and 10,562 other consumer contacts, including more than 7,961 telephone calls and 1,492 emails. The Division also had hundreds of in-person visits from consumers and processed dozens of written requests for information.

CONSUMER PROTECTION BY THE NUMBERS

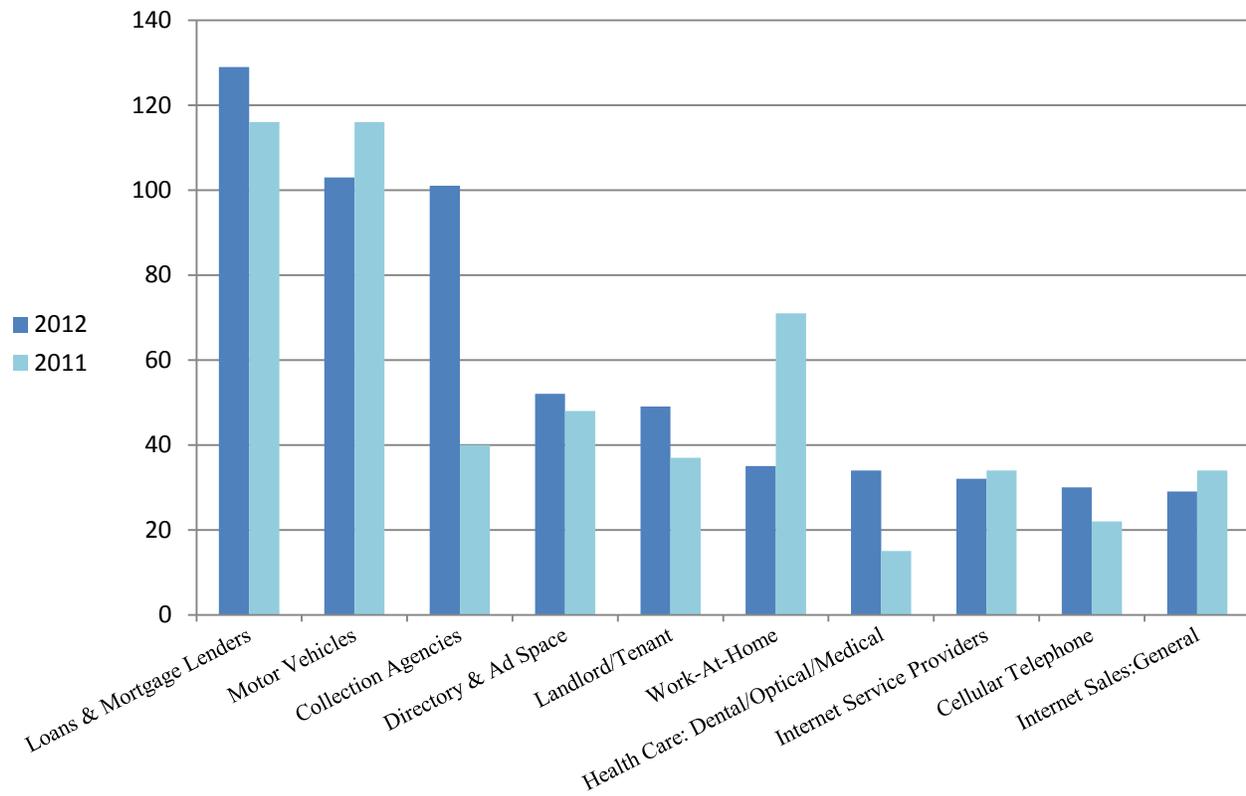
The office categorizes each complaint by the primary “good” or “service” complained about. The top 10 goods or services that Idaho consumers filed complaints about in 2012 are listed below:

TOP 10 COMPLAINT CATEGORIES

	Category	2012	2011
1	LOANS & MORTGAGE LENDERS	129	116
2	MOTOR VEHICLES	103	116
3	COLLECTION ACTIVITIES & ISSUES	101	40
4	DIRECTORY & AD SPACE	52	48
5	LANDLORD/TENANT ISSUES	49	37
6	WORK-AT-HOME PROGRAMS	35	71
7	HEALTH CARE: DENTAL/OPTICAL/MEDICAL	34	15
8	INTERNET SERVICE PROVIDERS	32	23
9	CELLULAR TELEPHONES	30	22
10	INTERNET SALES	29	34
	ALL OTHER COMPLAINTS	537	506
	TOTAL COMPLAINTS RECEIVED	1,131	1,028



Top Ten Complaint Categories (2012 and 2011)



Consumer complaints increased almost ten percent from 2011. Complaints about loans and mortgage lenders remained number one this year and increased from 2011.

The largest jump in complaints relates to collection agencies and issues concerning debt collection. In 2012, the Attorney General received 101 complaints, more than twice the number of debt collector complaints that he received in 2011.

The other complaint category that experienced growth relates to landlord-tenant disputes. While the Attorney General see a

variety of landlord-tenant complaints, the most common complaint involves the landlord inappropriately retaining the tenant's security deposit.

The second highest volume of complaints received in 2012 concern motor vehicles. Typically, this category is number two or three each year. The complaints in 2012 raised a variety of issues, including vehicle advertising and sales, but were not concentrated in one area.

EDUCATION AND OUTREACH

Public awareness and education remain the best defenses against consumer fraud. Providing Idaho's consumers with timely, accurate information about their rights under Idaho's consumer laws and warning consumers about pervasive scams encourages Idahoans to maintain their personal and financial vigilance. Educated consumers are better equipped to monitor and judge a business's practices, thereby promoting a more compliant and competitive marketplace.

The Attorney General provides consumer information through his website, public service announcements, pamphlets and

consumer tip sheets, consumer alerts, and public speaking engagements. Information and guidelines are available to companies operating in Idaho, and the Attorney General strives to continue his cooperative working relationship with Idaho's business community.

The Attorney General's educational and outreach efforts do not use tax dollars. Money from civil penalties, fees, and reimbursed costs is deposited into the consumer protection account. Funds from this account, pursuant to legislative appropriation, pay for the Attorney General's educational activities.

ATTORNEY GENERAL'S WEBSITE

The Attorney General's website at www.ag.idaho.gov provides information for Idaho businesses and consumers. The site has pages dedicated to:

Consumer Protection

The page includes links to information about filing a consumer complaint, dealing with credit card debt, buying a new or used car, controlling junk mail and unsolicited telephone calls, and contacting a consumer specialist.

Telephone Solicitation Registration and Renewal

Visitors will find information about Idaho's telemarketing registration process, including an application.

Mortgage Servicing, Housing and Foreclosure

This page includes information about Idaho's housing-related laws, including the Idaho Deed of Trust Act. Mortgage servicers have access to form templates to ensure they comply with mortgage notice

requirements and answers to frequently asked questions about the forms and the laws' new requirements. Links to information about avoiding foreclosure and mortgage modification scams are listed on this page.

Tobacco

Visitors to this page will find a copy of Idaho's Master Settlement Agreement, links to Idaho's tobacco laws, and a database of tobacco manufacturers that have signed onto the MSA and their MSA-compliant brands.

PUBLIC SERVICE ANNOUNCEMENTS

Public service announcements—broadcast via television and radio in the fall of 2012—increased consumer awareness of issues involving foreclosure, mortgage modification fraud, and home buying.

PROTECTEENS

Developed by Attorney General Wasden and Secretary of State Ben Ysursa, *ProtectTeens* is a video presentation and a resource kit for educating parents and teens about using the Internet wisely and safely. Parental supervision and vigilance are the keys to protecting children from Internet predators, but adults often are unaware of the dangers or lack the knowledge or skills to utilize the technology available to them. *ProtectTeens* helps bridge the awareness, knowledge, and skills gap between parents and their children, while reminding teens of the potential risks associated with linking themselves to the rest of the world.

ProtectTeens is available for viewing on the Attorney General's website at www.ag.idaho.gov. Idahoans may use the website contact form to request a mailed copy of the *ProtectTeens* DVD or to request a *ProtectTeens* presentation to a group or organization. The *ProtectTeens* program is the result of a partnership with Governor C.L. "Butch" Otter, First Lady Lori Otter, Superintendent of Public Instruction Tom Luna, and the following organizations: The State of Idaho Internet Crimes Against Children Task Force; the Idaho Association of School Administrators, the Idaho Parent Teachers Association, the Idaho Prosecuting Attorneys Association, the Idaho Medical Association, the Idaho Sheriffs Association, the Idaho School Boards Association, and the Idaho Chiefs of Police Association.

CONSUMER EDUCATION PUBLICATIONS

Eighteen consumer manuals are available to download from the Attorney General’s website or by requesting copies from the Consumer Protection Division. The manuals are free and produced without cost to Idaho’s taxpayers. Funds obtained as the result of enforcement actions, with legislative approval, pay for the manuals.

TOPIC	PUBLICATION TITLE
Automobiles	Guidelines for Motor Vehicle Advertising in Idaho Idaho Lemon Law
Charities & Non-Profits	Charitable Giving Service on an Idaho Non-Profit Board of Directors
Credit & Debt	Credit and Debt
General Consumer Issues	Consumer Protection Manual Senior Citizens Manual Young Adult Handbook
Housing & Home Improvement	Buying a Home Foreclosure Prevention and Foreclosure Scams: How to Tell the Difference Landlord Tenant Guidelines Residential Construction
Identity Theft & Privacy	Identity Theft Manual
Internet Safety	Internet Lingo Dictionary Internet Safety Manual A Parent’s Guide to Social Networking Websites
Telephone & Mail Schemes	Telephone Solicitation Manual Pyramids, Gift Schemes & Network Marketing

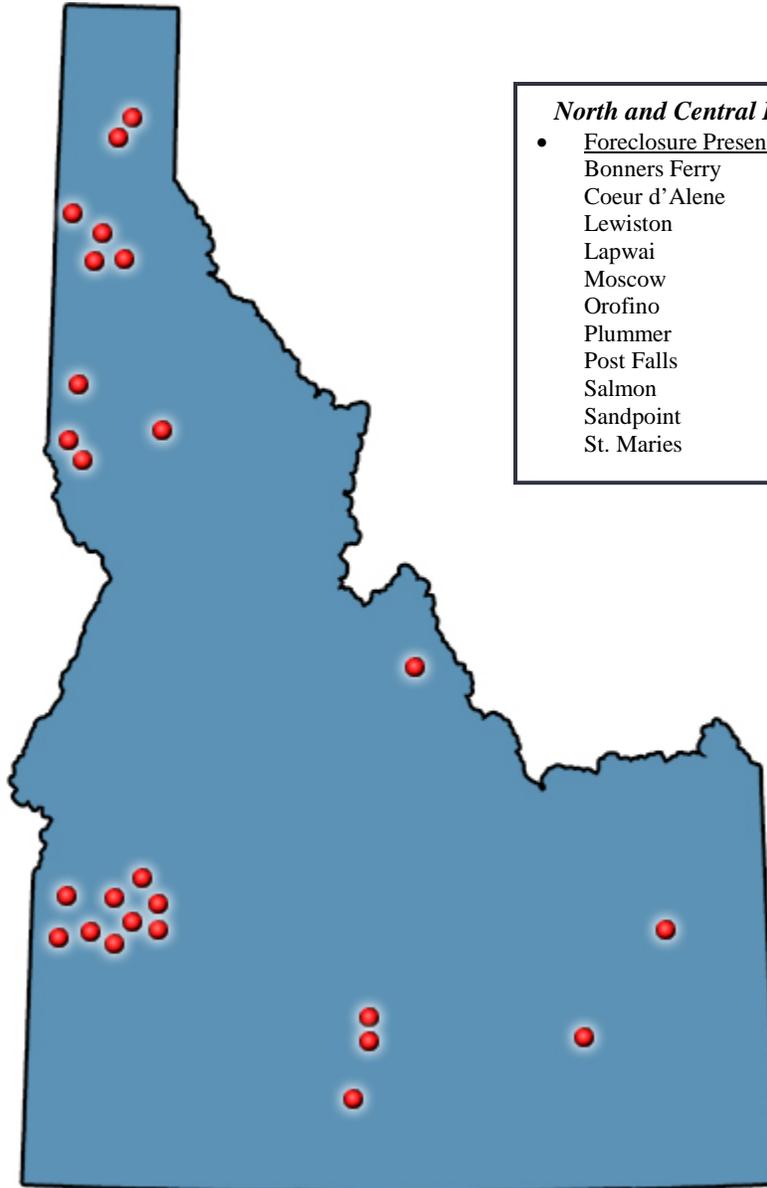
The Attorney General also provides tip sheets about preventing unwanted telephone solicitations, finding a credit or debt counselor, avoiding mail fraud, and other topics.

CONSUMER AND MORTGAGE FORECLOSURE OUTREACH PRESENTATIONS

Consumer Protection Division personnel spoke throughout Idaho about identity theft, health care fraud, Internet safety, foreclosure prevention, and current scams. The three consumer and one housing

specialists visited fairs, senior centers, universities, and high schools in all parts of Idaho and participated in Scam Jams and Shred-a-Thons with other consumer organizations. At each event, the specialists answered questions from audiences and distributed consumer education manuals. The map on the next page shows the Idaho towns and events where consumer staff members visited in 2012.

Locations visited by Consumer and Housing Specialists in 2012



North and Central Idaho

- Foreclosure Presentations:
 Bonners Ferry
 Coeur d'Alene
 Lewiston
 Lapwai
 Moscow
 Orofino
 Plummer
 Post Falls
 Salmon
 Sandpoint
 St. Maries

Southwest Idaho

- Senior Centers:
 Boise
 Garden City
 Caldwell
 Star
 Kuna
 Eagle
 Nampa
 Homedale
- ID Theft Presentations:
 Boise
 Nampa
- Shred-a-thons:
 Boise
 Nampa
- Financial Literacy:
 Meridian
- Consumer Fairs:
 Nampa
 NNU Welcome Fair

Southeast Idaho

- Scam Jams:
 Idaho Falls
 Pocatello
- ID Theft Presentations:
 Pocatello
- Senior Centers:
 Idaho Falls
- Business Groups:
 Idaho Falls

South Central Idaho

- Scam Jams:
 Twin Falls
- Foreclosure Presentations:
 Hailey
 Ketchum
- ID Theft Presentations:
 Twin Falls
- Financial Literacy:
 Twin Falls

TEN YEAR CONSUMER PROTECTION SUMMARY

ACTIVITY	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Complaints Received	1,131	1,028	1,312	1,896	1,676	1,614	2,051	1,875	4,079	2,259
Other Consumer Contacts	10,562	10,756	12,422	14,255	4,997	3,384	3,226	5,236	2,762	7,635
Dollars Claimed Lost	\$2,271,658	\$2,074,981	\$2,715,622	\$2,227,203	\$9,800,077	\$3,641,859	\$2,622,263	\$1,380,717	N/A	\$967,673
Restitution Recovered	\$8,497,948	\$8,151,956	\$5,920,578	\$7,431,388	\$932,134	\$662,253	\$1,692,089	\$603,089	\$5,777,643	\$1,671,078
Penalties & Costs Recovered	\$16,468,334	\$2,530,829	\$536,237	\$5,944,188	\$2,988,047	\$1,772,175	\$281,678	\$252,777	\$528,138	\$566,486
Enforcement Actions Completed	29	18	22	18	39	19	12	22	15	30
Registered Telemarketers	76	80	75	62	53	71	66	52	76	76
Numbers on DNC Registry	1,088,730	1,048,897	1,019,030	939,958	855,696	702,513	624,222	434,382	362,061	256,182

For more information about this report or to file a consumer complaint:

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Consumer Protection Division
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P.O. Box 83720
Boise, ID 83720-0010**

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