

## **IDAPA 12 – IDAHO DEPARTMENT OF FINANCE**

### **Financial Institutions Bureau**

#### **12.01.04 – Rules Pursuant to the Idaho Credit Union Act**

##### **Who does this rule apply to?**

*The rule applies to Idaho state-chartered credit unions.*

##### **What is the purpose of this rule?**

*This rule defines requirements for a charter application, provides that bookkeeping and record keeping services be subject to rule and examination of the department, prohibits misleading advertising, provides requirements for member business loans, restricts preferential loans, and restricts fees that may be received on loans.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Banks and Banking -

Idaho Credit Union Act:

- [Section 26-2105, Idaho Code](#) – Organization
- [Section 26-2119, Idaho Code](#) – Loans to Members
- [Section 26-2136, Idaho Code](#) – Examination and Fees
- [Section 26-2144, Idaho Code](#) – Administration, Rules and Regulations

##### **Who do I contact for more information on this rule?**

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## 12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT

### 000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 26-2144, Idaho Code. (7-1-24)

### 001. SCOPE.

These rules implement statutory intent with respect to the regulation and supervision of state chartered credit unions in the state of Idaho. (7-1-24)

### 002. -- 004. (RESERVED)

### 005. DEFINITIONS.

The definitions found in Section 26-2104, Idaho Code are incorporated herein and those defined terms have the same meaning in these rules. These rules have the following additional defined terms: (7-1-24)

**01. Associated Borrower.** As that term is defined in Section 26-2120(1)(b), Idaho Code. (7-1-24)

**02. Immediate Family Member.** As that term is defined in Section 26-2109(4)(c), Idaho Code. (7-1-24)

**03. Member Business Loan.** Means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, business, or agricultural purpose, except: (7-1-24)

**a.** A loan or loans secured by a 1 to 4 family residential property. (7-1-24)

**b.** A loan that is fully secured by shares in the credit union or shares or deposits in other financial institutions. (7-1-24)

**c.** A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated borrower, which, when added to such other loans to the borrower, is less than fifty thousand dollars (\$50,000). (7-1-24)

**d.** A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, an agency of the federal government or a state or any of its political subdivisions. (7-1-24)

**04. Loan or Loans Secured by a 1 to 4 Family Residential Property.** Means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than 50 percent of the principal amount of the loan. (7-1-24)

**05. NCUA.** Means the National Credit Union Administration. (7-1-24)

### 006. -- 039. (RESERVED)

### 040. MEMBER BUSINESS LOAN REQUIREMENTS.

**01. Requirements.** The following requirements apply in addition to Sections 26-2119, 26-2120, 26-2120A, Idaho Code: (7-1-24)

**a.** Submission to Director and NCUA. A credit union must submit the proposed written policies, and any future amendments to the policies, to the Director for approval at least thirty (30) days prior to the proposed date of implementation of the member business loan program or amendments. Any credit union that is NCUA insured must also provide notice and a copy of the loan policies or amendments to the appropriate NCUA regional office within thirty (30) days before adoption and implementation of the policies or amendments. (7-1-24)

**b.** Loan Policy Review. The board will review and approve the loan policies annually. (7-1-24)

**c.** Minimum Business Loan Policy Requirements. Credit unions that do not intend to make member business loans do not have to adopt and implement these policies. However, if such a credit union decides to begin making member business loans at some time in the future, the requirements of this section will apply, except that the

specific business loan policies must be adopted and implemented no less than thirty (30) days before any member business loan is made, Pursuant to Section 26-2119, Idaho Code, member business loan policies must contain the following: (7-1-24)

- i. Types of business loans that will be made. (7-1-24)
- ii. The credit union's trade area for business loans. (7-1-24)
- iii. Maximum amount of the credit union's assets in relationship to net worth that will be invested in business loans, not to exceed three hundred percent (300%). (7-1-24)
- iv. Maximum amount of credit union assets in relationship to net worth that will be invested in a given category or type of business loan. (7-1-24)
- v. Maximum amount of credit union assets, in relation to net worth, that will be loaned to any one (1) borrower or group of associated borrowers. (7-1-24)
- vi. Qualifications and experience of personnel involved in making and administering business loans. (7-1-24)
- vii. Analysis of ability of the borrower to repay the loan. (7-1-24)
- viii. The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns. (7-1-24)
- ix. Collateral requirements, including loan-to-value ratios; appraisals, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is to be reevaluated. (7-1-24)
- x. Appropriate interest rates and maturities of business loans. (7-1-24)
- xi. Loan monitoring, servicing, and follow-up procedures, including collection procedures. (7-1-24)
- d.** Loans to One (1) Borrower. The following restrictions apply to credit unions loans to one (1) borrower. (7-1-24)
  - i. The aggregate amount of outstanding member business loans to any one (1) borrower or group of associated borrowers shall not exceed twenty percent (20%) of the credit union's net worth. (7-1-24)
  - ii. Loan or loans secured by a one (1) to four (4) family residential property that is the member's primary residence or secondary residence, or loans secured by shares in the credit union or deposits in another financial institution, or loans insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the twenty percent (20%) limit. (7-1-24)
  - iii. Credit unions seeking an exception from the twenty percent (20%) limit must present to the Director the higher limit sought, an explanation of the need to raise the limit, an analysis of the credit union's prior experience making member business loans, and a copy of its business lending policy. In addition, at the same time this information is presented to the Director, any credit union that is NCUA insured must also submit a copy of the information to the appropriate NCUA regional office for its review and comment. (7-1-24)
  - iv. Any decision by the Director to grant any request to exceed the twenty percent (20%) loan-to-one borrower's limit will be made only after consultation and coordination with NCUA. (7-1-24)

**e.** Credit risk rating system. Credit risk ratings must be assigned to commercial loans at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles. At a minimum, the following credit risk ratings must be used: Pass; Special Mention; Substandard; Doubtful; and Loss. (7-1-24)

**02. Ineligible Borrowers.** A credit union may not grant member business loans to the following: (7-1-24)

**a.** Any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members; (7-1-24)

**b.** Any person meeting the definition of an associated borrower with respect to persons identified in Subsection 040.02.a. of this rule; or (7-1-24)

**c.** Any compensated director, unless the credit union's board of directors approves granting the loan and the compensated director was recused from the board's decision making process. (7-1-24)

**d.** The credit union shall not grant a member business loan where any requirement for the payment, or the amount of the payment, on the loan is conditioned on the profitability or success of the business or commercial endeavor for which the loan is made. (7-1-24)

**041. -- 049. (RESERVED)**

**050. NONPREFERENTIAL TREATMENT.**

**01. Nonpreferential Treatment.** The requirement of extending credit on "substantially the same terms as those prevailing..." found in Section 26-2119(2), Idaho Code, is also applicable to: (7-1-24)

**a.** Immediate family members of those persons listed in Section 26-2119(2), Idaho Code; (7-1-24)

**b.** Any business entity or venture owned, in whole or in part, by those persons listed in Section 26-2119(2), Idaho Code, or their immediate family members. (7-1-24)

**051. -- 059. (RESERVED)**

**060. PROHIBITION ON COMMISSION FOR MAKING LOANS.**

No officer, director, or employee of any credit union, or immediate family thereof, shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension, or renewal by said credit union of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a credit union to its employees. (7-1-24)

**061. -- 999. (RESERVED)**