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IDAPA 12 – DEPARTMENT OF FINANCE

12.01.04 – Rules Pursuant to the Idaho Credit Union Act

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**IDAPA 12
TITLE 01
CHAPTER 04**

IDAPA 12 – DEPARTMENT OF FINANCE

12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Section 26-2144, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is the Credit Union Rules of the Idaho Department of Finance; and may be cited as IDAPA 12.01.04, "Rules Pursuant to the Idaho Credit Union Act." These rules implement statutory intent with respect to the regulation and supervision of state chartered credit unions in the state of Idaho. (7-1-93)

002. WRITTEN INTERPRETATIONS -- AGENCY ACCESS -- FILINGS (RULE 2).

Written interpretations of these rules are available by mail from the Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Idaho Department of Finance, 800 Park Boulevard, Suite 200, Boise, Idaho 83712. The telephone numbers of the agency include (208)332-8000 - Administration; and (208) 334-2896 - Financial Institutions. The telephone number of the facsimile machine is (208) 334-2216. All filings with the agency in connection with rulemaking or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. (7-1-93)

003. ADMINISTRATIVE APPEALS (RULE 3).

All administrative appeals are governed by Idaho statutory provisions under which the rules are promulgated and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules contained in this chapter are public records. (7-1-93)

005. DEFINITIONS (RULE 5).

The definitions used in this chapter are as follows: (7-1-93)

01. Act. Means the Idaho Credit Union Law, Chapter 21, Title 26, Idaho Code. (7-1-93)

02. Applicant. Means a group of persons applying for a credit union charter. (7-1-93)

03. Department. Means the Idaho Department of Finance. (7-1-93)

04. Director. Means the Director of the Department. (7-1-93)

05. Corporate Credit Union. Means a corporate credit union chartered under the provisions of the act. (7-1-93)

06. Credit Union. Means a credit union chartered under the provisions of the act. (7-1-93)

07. NCUA. Means the National Credit Union Administration. (7-1-93)

006. -- 009. (RESERVED)

010. CHARTER APPLICATIONS (RULE 10).

01. Scope of Rule. This rule establishes guidelines for approval of credit union charter applications. (7-1-93)

02. Purpose of Rules. This rule is adopted by the Director for the purpose of setting guidelines for the approval of credit union charters. (7-1-93)

03. Guidelines for Approval of Credit Union Charters. Each application for a credit union shall set forth or show: (7-1-93)

a. The proposed name of the credit union; (7-1-93)

b. The city, county, or area in which the proposed credit union is to hold its charter; (7-1-93)

c. A description of the common bond for the field of membership of the potential members of the credit union. Said field of membership should indicate that there are enough potential members to allow the proposed credit union to successfully carry on credit union operations; (7-1-93)

d. That the stability of employment of the potential members of the credit union or that the stability of membership in the association which comprises the common bond of membership is sufficient to allow the credit union to maintain a stable level of participation by members; (7-1-93)

e. The economic characteristics of the proposed field of membership indicating the ability of members to provide funds in sufficient amounts to carry out the purposes for which the credit union is formed; (7-1-93)

f. That the persons who form the common bond and potential field of membership of the credit union have indicated sufficient interest in the credit union that the Director may reasonably believe that credit union operations may be carried out successfully. (7-1-93)

011. -- 019. (RESERVED)

020. SERVICES, ADVERTISING, REPORTING CRIMES, BONDS (RULE 20).

01. Scope of Rule. This rule regulates certain areas of credit union operations. (7-1-93)

02. Purpose of Rule. This rule is adopted by the Director for the purpose of carrying out the provisions of Chapter 21 of Title 26, Idaho Code, which is the Idaho Credit Union Law. (7-1-93)

03. Credit Union Services. (7-1-93)

a. No credit union may cause to be performed, by contract or otherwise, any credit union bookkeeping or record keeping services for itself, whether on or off premises, unless assurances satisfactory to the Director are provided by both the credit union and the party performing such services, which indicate that the performance thereof will be subject to rule and examination by the Director or his duly authorized representative to the same extent as if such services were being performed by the credit union itself on its own premises. If this service is "on premises" then prior written approval of the Director must be obtained before service is sold or otherwise made available to any outside customer. (7-1-93)

b. The assurances referred to above shall be submitted prior to the time the contract or agreement becomes effective in the form of letters from both parties and signed by a duly authorized officer of the credit union and by the party, or duly authorized officer or representative of such party, stating they will perform the services for the credit union, that the credit union and the party performing such services have entered into an agreement, that the performance of the services will be subject to rule and examination by the Director, and that such performance of services will be made available for examination. A copy of the contract or agreement covering these services shall accompany these letters. (7-1-93)

04. Advertising. (7-1-93)

a. A credit union shall not issue, circulate, or publish any advertisement which misrepresents the nature of its shares, stocks, investments, certificates, or the rights of shareholders in respect thereto. (7-1-93)

- b.** No credit union shall in any advertisement: (7-1-93)
- i.** Use the words “chartered by the state of Idaho” unless said credit union has been issued a charter by the Director; (7-1-93)
- ii.** Use the words “National Credit Union Share Insurance Fund” or any facsimile thereof; nor shall any credit union use any insignia, seal, or device whatsoever which represents that the shares or deposits of the credit union are insured by the Administrator, NCUA, unless, in fact, the credit union is so insured. (7-1-93)
- c.** The Director upon written notification to any or all credit unions may require that a true copy of the text of any advertisement be filed with his office at least five (5) days prior to the issuance, circulation, or publication of such advertisement. (7-1-93)

021. -- 039. (RESERVED)

040. MEMBER BUSINESS LOANS (RULE 40).

- 01. Scope of Rule.** This rule establishes guidelines for approval of credit unions making member business loans. (7-1-93)
- 02. Purpose of Rule.** This rule is adopted by the Director for the purpose of setting guidelines for credit unions to make member business loans. The objective of the rules is to ensure that member business loans are made in a way that will reduce the risk inherent in such loans. The Director’s goal is to provide the basis for a system of member business lending that is consistent with safe and sound practices. (7-1-93)
- 03. Definitions.** For the purposes of this rule, the following definitions apply: (7-1-93)
- a.** The term “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 the following shall not be considered member business loans for the purpose of this rule: (7-1-93)
- i.** A loan or loans fully secured by a lien on a one to four family dwelling that is either the member’s primary residence, or the member’s secondary residence. (7-1-93)
- ii.** A loan that is fully secured by shares in the credit union or deposits in other financial institutions. (7-1-93)
- iii.** A loan, the proceeds of which are used for a commercial, business, or agricultural purpose, made to a borrower or an associated member, which, when added to such other loans to the borrower, is less than fifteen thousand dollars (\$15,000). (7-1-93)
- iv.** 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. (7-1-93)
- b.** “Reserves” means all reserves including the allowance of loan losses account and undivided earnings or surplus. (7-1-93)
- c.** “Associated Member” means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor. (7-1-93)
- d.** “Immediate Family Member” means a spouse or other family members, related by blood or operation of law, living in the same household. (7-1-93)
- 04. Requirements.** A credit union may make member business loans only in accordance with the following requirements: (7-1-93)

a. Written Loan Policies. Except as provided in this section, the board of directors must adopt specific business loan policies within sixty (60) days of the effective date of this rule and review them at least annually. 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. (7-1-93)

b. 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. The policies shall at a minimum address the following: (7-1-93)

i. Types of business loans that will be made. (7-1-93)

ii. The credit union's trade area for business loans. (7-1-93)

iii. Maximum amount of the credit union's assets in relationship to reserves that will be invested in business loans, not to exceed three hundred percent (300%). (7-1-93)

iv. Maximum amount of credit union assets in relationship to reserves that will be invested in a given category or type of business loan. (7-1-93)

v. Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one (1) member or group of associated members. (7-1-93)

vi. Qualifications and experience of personnel involved in making and administering business loans. (7-1-93)

vii. Analysis of ability of the borrower to repay the loan. (7-1-93)

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. (7-1-93)

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. (7-1-93)

x. Appropriate interest rates and maturities of business loans. (7-1-93)

xi. Loan monitoring, servicing, and follow-up procedures, including collection procedures. (7-1-93)

c. Loans to One (1) Member. The following restrictions apply to credit unions loans to one (1) member. (7-1-93)

i. The aggregate amount of outstanding member business loans to any one (1) member or group of associated members shall not exceed twenty percent (20%) of the credit union's reserves. (7-1-93)

ii. If any portion of a member business loan is fully secured by a one (1) to four (4) family dwelling that is the member's primary residence or secondary residence, or by shares in the credit union or deposits in another financial institution, or 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. (7-1-93)

iii. Credit unions seeking an exception from the twenty percent (20%) limit must present to the Director, at a minimum: 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. (7-1-93)

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. (7-1-93)

d. Allowance for Loan Losses. The determination of whether a member business loan will be classified as substandard, doubtful, or loss will rely on factors not limited to the delinquency of the loan. Non-delinquent loans may be classified, depending on an evaluation of factors including, but not limited to, the adequacy of analysis and documentation. (7-1-93)

e. Loans classified shall be reserved as follows: (7-1-93)

i. Loss loans at one hundred percent (100%) of outstanding amount; (7-1-93)

ii. Doubtful loans at fifty percent (50%) of outstanding amount; and (7-1-93)

iii. Substandard loans at ten percent (10%) of outstanding amount, unless other factors (e.g., history of such loans at the credit union) indicate that a greater or lesser amount is appropriate. (7-1-93)

05. Prohibitions. A credit union may not make member business loans to the following nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees: (7-1-93)

a. The credit union's chief executive officer; typically this individual holds the title of president, treasurer, or manager. (7-1-93)

b. Any assistant chief executive officers; often the assistant manager. (7-1-93)

c. The chief financial officer or comptroller. The credit union shall not grant a member business loan where any provision 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. (7-1-93)

041. -- 049. (RESERVED)

050. NONPREFERENTIAL TREATMENT (RULE 50).

01. Scope of Rule. This rule establishes guidelines to ensure the non-preferential treatment of certain persons regarding credit union loans or lines of credit. (7-1-93)

02. Purpose of Rule. This rule sets guidelines to ensure that certain persons are not given preferential treatment as to the rates, terms, or conditions of a credit union loan or line of credit, and thus promote fair, safe, and sound lending practices for credit unions. (7-1-93)

03. Nonpreferential Treatment. The rates, terms, and conditions on any loan or line of credit either made to, or endorsed or guaranteed by: (7-1-93)

a. An official; (7-1-93)

b. An immediate family member of an official; or (7-1-93)

c. Any individual having a common ownership, investment, or other pecuniary interest in a business

enterprise with an official or with an immediate family member of an official, shall not be more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members. "Official" means any member of the board of directors, credit committee, or supervisory committee. "Immediate family member" means a spouse or other family members, related by blood or operation of law, living in the same household.

(7-1-93)

051. -- 059. (RESERVED)

060. PROHIBITED FEES, COMMISSIONS, COMPENSATION (RULE 60).

01. Scope of Rule. This rule establishes guidelines that prohibit certain commissions, fees, or other compensation from being charged on any credit union loan or line of credit.

(7-1-93)

02. Purpose of Rule. This rule is adopted by the Director for the purpose of setting guidelines to ensure that commissions, fees, or other compensation is not charged and received by certain persons, and thus promote fair, safe, and sound lending practices for credit unions.

(7-1-93)

03. Prohibited Fees. A credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee, or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this section. "Senior management employees" refers to those employees described in Subsection 040.05 of these rules. "Immediate family member" means a spouse, or other family members, related by blood or operation of law, living in the same household.

(7-1-93)

061. -- 999. (RESERVED)

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