

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

DOCKET NO. 12-0000-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 26-2144, 26-2228(4), 26-2248, 26-31-103, 26-31-204(5), 26-31-302, 27-416, 28-46-104, and 30-14-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 12, rules of the Idaho Department of Finance.

IDAPA 12

- IDAPA 12.01.04, *Rules Pursuant to the Idaho Credit Union Act* – All rules *except Subsections 010.01.b, 010.04, 010.05, 020.05, 020.06, and Section 030.*
- IDAPA 12.01.09, *Rules Pursuant to the Idaho Credit Code* – All rules *except Section 006.*
- IDAPA 12.01.10, *Rules Pursuant to the Idaho Residential Mortgage Practices Act* – All rules *except Subsections 005.05, 040.01.a., 060.01, and 060.06*
- IDAPA 12.01.11, *Rules Pursuant to the Idaho Collection Agency Act*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules give authorization to financial institutions to exercise certain powers and conduct business; provide protection to customers of the institutions, investors, and others; support the orderly extension of credit to Idaho citizens and businesses; and support the Department's orderly supervision of the state's endowment care cemeteries

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact:

- Acting Financial Institutions Bureau Chief Bradley Bergquist, (208) 332-8041 (*Rules Pursuant to the Idaho Credit Union Act*)
- Consumer Finance Bureau Chief Anthony Polidori, (208) 332-8060 (*Rules Pursuant to the Idaho Credit Code, Rules Pursuant to the Idaho Residential Mortgage Practices Act, Rules Pursuant to the Idaho Collection Agency Act*)

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Mary E. Hughes
Acting Director
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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)

**IDAPA 12
TITLE 01
CHAPTER 09**

12.01.09 – RULES PURSUANT TO THE IDAHO CREDIT CODE

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Sections 28-43-307 and 28-46-104, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is the Idaho Credit Code Rules of the Idaho Department of Finance; and may be cited as IDAPA 12.01.09, “Rules Pursuant to the Idaho Credit Code.” These rules implement statutory intent with respect to the regulation of credit transactions in the state of Idaho in accordance with the provisions of chapters 41 through 49 of title 28, Idaho Code. (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 are (208) 332-8000 - Administration; and (208) 332-8002 - Consumer Finance Bureau. The telephone number of the facsimile machine for the Consumer Finance Bureau is (208) 332-8096. All filings with the Idaho Department of Finance in connection with rulemaking or contested cases shall be made with the Director of the Idaho Department of Finance, and 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. INCORPORATION BY REFERENCE (RULE 5).

The “Rules Pursuant to the Idaho Credit Code,” incorporate by reference the full text of the federal Consumer Credit Protection Act, 15 U.S.C., Chapter 41, et seq., and regulations issued pursuant to that act, including the following: (4-11-19)

01. The Truth in Lending Act. Consumer Credit Cost Disclosure Act or “The Truth in Lending Act.” As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2019. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapI.htm>. (4-11-19)

02. Regulation Z. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2019. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml>. (4-11-19)

03. Restrictions on Garnishment Act. As set forth in 15 U.S.C. 1671, et seq., as amended to and including January 1, 2019. The Restrictions on Garnishment Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapII.htm>. (4-11-19)

04. Credit Repair Organizations Act. As set forth in 15 U.S.C. 1679, et seq., as amended to and including January 1, 2019. The Credit Repair Organizations Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapI-A.htm>. (4-11-19)

05. Credit Reporting Agencies Act or “Fair Credit Reporting Act.” As set forth in 15 U.S.C. 1681, et seq., as amended to and including January 1, 2019. The Fair Credit Reporting Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapIII.htm>. (4-11-19)

06. Regulation V. As set forth in 12 CFR 1022, et seq., as amended to and including January 1, 2019. Regulation V is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1022.xml>. (4-11-19)

07. Equal Credit Opportunity Act. As set forth in 15 U.S.C. 1691, et seq., as amended to and including January 1, 2019. The Equal Credit Opportunity Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapIV.htm>. (4-11-19)

08. Regulation B. As set forth in 12 CFR 1002, et seq., as amended to and including January 1, 2019. Regulation B is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1002.xml>. (4-11-19)

09. Debt Collection Practices Act or “Fair Debt Collection Practices Act.” As set forth in 15 U.S.C. 1692, et seq., as amended to and including January 1, 2019. The Fair Debt Collection Practices Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapV.htm>. (4-11-19)

10. Electronic Funds Transfer Act. As set forth in 15 U.S.C. 1693, et seq., as amended to and including January 1, 2019. The Electronic Funds Transfer Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapVI.htm>. (4-11-19)

11. Regulation E. As set forth in 12 CFR 1005, et seq., as amended to and including January 1, 2019. Regulation E is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1005.xml>. (4-11-19)

12. Availability of Documents. Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (4-11-19)

006. -- 999. (RESERVED)

**IDAPA 12
TITLE 01
CHAPTER 10**

12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. (3-29-10)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is “Rules Pursuant to the Idaho Residential Mortgage Practices Act,” which rules are administered by the Idaho Department of Finance, and may be cited as IDAPA 12.01.10. These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-29-10)

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 Idaho Department of Finance are: (208) 332-8000 - Administration; and (208) 332-8002 - Consumer Finance Bureau. The number for the facsimile machine in the Consumer Finance Bureau is (208) 332-8096. All filings with the Idaho Department of Finance in connection with rulemaking or contested cases shall be made with the Director of the Idaho Department of Finance, and include an original and one (1) copy. (3-29-10)

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.” (11-1-98)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules contained in this chapter are public records. (11-1-98)

005. INCORPORATION BY REFERENCE (RULE 5).

The “Rules Pursuant to the Idaho Residential Mortgage Practices Act,” incorporate by reference the full text of the following: (4-4-13)

01. The Real Estate Settlement Procedures Act. As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 2019. The Real Estate Settlement Procedures Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title12/html/USCODE-2016-title12-chap27.htm>. (4-11-19)

02. Regulation X. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 2019. Regulation X is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1024.xml>. (4-11-19)

03. The Truth in Lending Act. As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2019. The Truth in Lending Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41.htm>. (4-11-19)

04. Regulation Z. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2019. Regulation Z is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml>. (4-11-19)

05. Availability of Documents. Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (4-4-13)

006. DEFINITIONS (RULE 6).

As used in the Idaho Residential Mortgage Practices Act and these rules, the following definitions apply: (3-29-10)

01. Act. Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

02. Application. In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. (3-29-10)

03. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee or person required to be licensed under the Act to complete such process. (3-29-10)

04. Director. Means the director of the Idaho Department of Finance. (3-30-06)

007. -- 039. (RESERVED)

040. DECEPTIVE ADVERTISING (RULE 40).

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. Deceptive advertising is defined to include the following practices by a licensee, or a person required to be licensed under the Act: (3-29-10)

a. Advertising without clearly and conspicuously disclosing the business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the licensee or person required to be licensed under the Act. (3-29-10)

b. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the licensee or person required to be licensed under the Act. (3-29-10)

c. Using an address in advertising at which the licensee or person required to be licensed under the Act conducts no mortgage brokering, mortgage lending, or mortgage loan origination activities or for which the licensee or person required to be licensed does not hold a license. (3-29-10)

d. Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person’s current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. (3-29-10)

041. -- 049. (RESERVED)

050. WRITTEN DISCLOSURES (RULE 50).

01. Receipt of an Application. Upon receipt of an application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a licensee or person required to be licensed under the Act shall make available to each borrower information, in a manner acceptable to the Director, about the services authorized under the Act that he may provide to a borrower. (3-25-16)

02. Information Provided After Receipt of an Application. After receipt of a residential mortgage loan application, a licensee or person required to be licensed under the Act shall provide to the borrower the following disclosures specific to the residential mortgage loan application: (3-25-16)

a. Disclosures in compliance with the requirements of the Truth-in-Lending Act and Regulation Z. (3-25-16)

b. Disclosures in compliance with the requirements of the Real Estate Settlement Procedures Act and Regulation X. (3-25-16)

03. Loan Modification Confirmation. Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. (3-29-10)

051. RESTRICTIONS ON FEES (RULE 51).

If a licensee or person required to be licensed under the Act imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: (3-29-10)

01. Application Fee. An application fee shall include only the actual costs incurred by a licensee or person required to be licensed under the Act in connection with the taking of an application and transcribing application information. (3-29-10)

02. Cancellation Fee. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a licensee or person required to be licensed under the Act to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the licensee or person required to be licensed under the Act for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. (3-29-10)

052. -- 059. (RESERVED)

060. PROHIBITED PRACTICES (RULE 60).

It shall be a prohibited practice for any licensee, or person required to be licensed under the Act, in connection with offering or providing services authorized under the Act, to: (3-29-10)

01. Fail to Disburse Funds Timely. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: (3-29-10)

a. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)

b. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (3-30-06)

c. For the purposes of this Subsection, the term "immediately" represents a period of time no greater than seventy-two (72) hours. (3-29-10)

02. Fail to Provide Reasonable Opportunity for Document Review. Fail to give the borrower, upon the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document that is required pursuant to these rules, and other applicable laws, rules or regulations. (3-29-10)

03. Require Excessive Insurance. Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. (3-29-10)

04. Engage in Deceptive Advertising. Engage in any deceptive advertising as set forth in Section 040 of these rules. (3-29-10)

061. -- 089. (RESERVED)

090. BORROWERS UNABLE TO OBTAIN LOANS (RULE 90).

If, for any reason, a licensee or person required to be licensed under the Act fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the licensee or person required to be licensed under the Act shall provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other person to whom the borrower directs that the documents be transmitted. The licensee or person required to be licensed under the Act shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing. (3-29-10)

091. -- 099. (RESERVED)

100. IDAHO LEGISLATURE'S DETERMINATION AND THE DIRECTOR'S AUTHORITY (RULE 100).

In Section 26-31-103(1) of the Act, the Idaho Legislature determined that a uniform multistate administration of an automated license system for mortgage brokers, mortgage lenders and mortgage loan originators is consistent with both the public interest and the purposes of the Idaho Residential Mortgage Practices Act. In Section 26-31-103(2)(b) of the Act, the Idaho Legislature authorized the Director of the Idaho Department of Finance to establish by rule such new requirements as are necessary for the state of Idaho to participate in a uniform multistate automated licensing system upon the Director's finding that such new requirements are consistent with both the public interest and the purposes of the Act. The Director finds that the requirements set forth in Sections 100 and 101 of these rules are consistent with the public interest and the purposes of the Act, and therefore promulgates such rules pursuant to Section 26-31-103(2)(b) of the Act. (3-29-10)

101. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (RULE 101).

01. The Nationwide Mortgage Licensing System and Registry (NMLSR). The NMLSR is an Internet-based filing depository operated by the State Regulatory Registry, LLC (SRR), a wholly-owned operating subsidiary of the Conference of State Bank Supervisors (CSBS). The NMLSR is designed to accept license applications and license renewal applications electronically from mortgage brokers, mortgage lenders, and mortgage loan originators; collect associated statutory filing fees on behalf of participating jurisdictions, as well as the expenses associated with an applicant's or licensee's participation in the NMLSR; and provide the public with Internet-based access to information concerning mortgage brokers, mortgage lenders, and mortgage loan originators. The NMLSR began accepting electronic filings of applications from mortgage brokers, mortgage lenders, and mortgage loan originators from Idaho on January 1, 2008. (3-29-10)

02. Licensing Through the NMLSR. All mortgage brokers, mortgage lenders, and mortgage loan originators who seek to obtain or retain a license under the Act must do so through the NMLSR and must pay the charge imposed and retained by the NMLSR to fund the costs of the NMLSR associated with an applicant's or licensee's participation in the system. (3-29-12)

03. Statutory Fees. The NMLSR shall collect any statutory fees on behalf of the Idaho Department of Finance that are required to be paid to the Idaho Department of Finance by license applicants and licensees pursuant to the Idaho Residential Mortgage Practices Act. The NMLSR is required to forward to the Idaho Department of Finance all statutory fees it collects on behalf of the Idaho Department of Finance, pursuant to the terms of a written agreement between the Idaho Department of Finance and the SRR. (3-29-10)

102. -- 999. (RESERVED)

**IDAPA 12
TITLE 01
CHAPTER 11**

12.01.11 – RULES PURSUANT TO THE IDAHO COLLECTION AGENCY ACT

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Sections 26-2228(4) and 26-2248, Idaho Code. (4-11-19)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is “Rules Pursuant to the Idaho Collection Agency Act,” which rules are administered by the Idaho Department of Finance, and may be cited as IDAPA 12.01.11. These rules interpret the Idaho Collection Agency Act, Title 26, Chapter 22, Idaho Code. (4-11-19)

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 are (208) 332-8000 - Administration; and (208) 332-8002 - Consumer Finance Bureau. The telephone number of the facsimile machine for the Consumer Finance Bureau is (208) 332-8096. All filings with the Idaho Department of Finance in connection with rulemaking or contested cases shall be made with the Director of the Idaho Department of Finance, and shall include an original and one (1) copy. (4-11-19)

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.” (4-11-19)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules contained in this chapter are public records. (4-11-19)

005. INCORPORATION BY REFERENCE (RULE 5).

The “Rules Pursuant to the Idaho Collection Agency Act,” incorporate by reference the full text of the following: (4-11-19)

01. Fair Debt Collection Practices Act. As set forth in 15 U.S.C. 1692, et seq., as amended to and including January 1, 2019. Fair Debt Collection Practices Act is available for viewing online at: <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41-subchapV.htm>. (4-11-19)

02. Availability of Documents. Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (4-11-19)

006. -- 999. (RESERVED)