

Dear Senators COOK, Lenney, Ward-Engelking, and
Representatives CLOW, Ehlers, Berch:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Finance:

IDAPA 12.01.04 - Rules Pursuant to the Idaho Credit Union Act (ZBR Chapter Rewrite) - Proposed
Rule (Docket No. 12-0104-2301);

IDAPA 12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act (ZBR Chapter
Rewrite) - Proposed Rule (Docket No. 12-0110-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 11/06/2023. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/04/2023.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee
FROM: Legislative Drafting Attorney - Trevor Ahrens
DATE: October 17, 2023
SUBJECT: Department of Finance

IDAPA 12.01.04 - Rules Pursuant to the Idaho Credit Union Act (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 12-0104-2301)

IDAPA 12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 12-0110-2301)

Summary and Stated Reasons for the Rule

The Idaho Department of Finance submits notice of proposed rulemaking relating to the Idaho Credit Union Act and the Idaho Residential Mortgage Practices Act. Docket No. 12-0104-2301 reduces the regulatory burden by removing certain requirements and providing clarity regarding certain transactions. Docket No. 12-0110-2301 reduces regulatory burden by removing certain requirements. Both Dockets are intended to comply with Executive Order 2020-01, "Zero-Based Rulemaking."

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted for both dockets was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2023 Idaho Administrative Bulletin. No fiscal impact is expected.

Statutory Authority

The proposed rules in Docket No. 12-0104-2301 appears to be within the agency's statutory authority under Section 26-2144, Idaho Code and Docket No. 12-0110-2301 appears to be within the agency's statutory authority under Sections 26-31-103, 26-31-204, and 26-31-302, Idaho Code.

cc: Department of Finance
Lisa Baker

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

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Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE
12.01.04 – RULES PURSUANT TO THE IDAHO CREDIT UNION ACT
DOCKET NO. 12-0104-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 26-2144, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements and providing clarity to industry regarding certain transactions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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 resulting from this rulemaking:

This rulemaking will not impact the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September 1, 2023.

Anthony Polidori
Deputy Director
Idaho Department of Finance
11341 West Chinden Blvd., Suite A300
Boise, ID 83714
Phone: (208) 332-8060
Fax: (208) 332-8099
Email: anthony.polidori@finance.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0104-2301
(ZBR Chapter Rewrite)

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. ()

001. SCOPE.

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

002. -- 004. (RESERVED)

005. DEFINITIONS.

The definitions ~~used in this chapter are as follows~~ 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: (3-31-22)()

- ~~01. Act. Means the Idaho Credit Union Law, Chapter 21, Title 26, Idaho Code. (3-31-22)~~
- ~~02. Applicant. Means a group of persons applying for a credit union charter. (3-31-22)~~
- ~~03. Department. Means the Idaho Department of Finance. (3-31-22)~~
- ~~04. Director. Means the Director of the Department. (3-31-22)~~
- ~~05. Corporate Credit Union. Means a corporate credit union chartered under the provisions of the act. (3-31-22)~~
- ~~06. Credit Union. Means a credit union chartered under the provisions of the act. (3-31-22)~~
- 01. Associated Borrower. As that term is defined in Section 26-2120(1)(b), Idaho Code. ()
- 02. Immediate Family Member. As that term is defined in Section 26-2109(4)(c), Idaho Code. ()
- 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: ()
 - a. A loan or loans secured by a 1 to 4 family residential property. ()
 - b. A loan that is fully secured by shares in the credit union or shares or deposits in other financial institutions. ()
 - 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). ()
 - 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. ()

()

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. ()

075. NCUA. Means the National Credit Union Administration. ()

~~006.—009.~~ (RESERVED)

010. CHARTER APPLICATIONS.

~~01.~~ **Guidelines for Approval of Credit Union Charters.** Each application for a credit union shall set forth or show: (3-31-22)

~~a.~~ The proposed name of the credit union; (3-31-22)

~~b.~~ The city, county, or area in which the proposed credit union is to hold its charter; (3-31-22)

~~e.~~ 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; (3-31-22)

~~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; (3-31-22)

~~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; (3-31-22)

~~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. (3-31-22)

~~011.—019.~~ (RESERVED)

020. SERVICES, ADVERTISING, REPORTING CRIMES, BONDS.

~~01.~~ **Credit Union Services.** (3-31-22)

~~a.~~ A credit union shall not allow, 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. (3-31-22)

~~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.~~ (3-31-22)

~~**02. Advertising.**~~ (3-31-22)

~~**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.~~ (3-31-22)

~~**b.** No credit union may in any advertisement:~~ (3-31-22)

~~**i.** Use the words “chartered by the state of Idaho” unless said credit union has been issued a charter by the Director;~~ (3-31-22)

~~**ii.** Use the words “National Credit Union Share Insurance Fund” or any facsimile thereof; nor 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.~~ (3-31-22)

~~**e.** 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.~~ (3-31-22)

~~**021006. -- 039. (RESERVED)**~~

040. MEMBER BUSINESS LOANS REQUIREMENTS.

01. Definitions. For the purposes of this rule, the following definitions apply: (3-31-22)

~~**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 are not considered member business loans for the purpose of this rule:~~ (3-31-22)

~~**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.~~ (3-31-22)

~~**ii.** A loan that is fully secured by shares in the credit union or deposits in other financial institutions.~~ (3-31-22)

~~**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).~~ (3-31-22)

~~**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.~~ (3-31-22)

~~**b.** “Reserves” means all reserves including the allowance of loan losses account and undivided earnings or surplus.~~ (3-31-22)

~~**e.** “Associated Member” means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.~~ (3-31-22)

~~**d.** “Immediate Family Member” means a spouse or other family members, related by blood or operation of law, living in the same household.~~ (3-31-22)

~~**021. Requirements.** A credit union may make member business loans only in accordance with the following requirements The following requirements apply in addition to Sections 26-2119, 26-2120, 26-2120A, Idaho Code: (3-31-22)(_____)~~

~~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.~~ 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. (3-31-22)()

~~b. Loan Policy Review. The board will review and approve the loan policies annually.~~ ()

~~b.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.~~ that, at a minimum, address Pursuant to Section 26-2119, Idaho Code, member business loan policies must contain the following: (3-31-22)()

i. Types of business loans that will be made. ()

ii. The credit union's trade area for business loans. ()

iii. Maximum amount of the credit union's assets in relationship to ~~reserves~~ net worth that will be invested in business loans, not to exceed three hundred percent (300%). (3-31-22)()

iv. Maximum amount of credit union assets in relationship to ~~reserves~~ net worth that will be invested in a given category or type of business loan. (3-31-22)()

v. Maximum amount of credit union assets, in relation to ~~reserves~~ net worth, that will be loaned to any one (1) ~~member borrower~~ or group of associated ~~members~~ borrowers. (3-31-22)()

vi. Qualifications and experience of personnel involved in making and administering business loans. ()

vii. Analysis of ability of the borrower to repay the loan. ()

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. ()

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. ()

x. Appropriate interest rates and maturities of business loans. ()

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

~~ed. Loans to One (1) Member Borrower. The following restrictions apply to credit unions loans to one (1) member borrower.~~ (3-31-22)()

i. The aggregate amount of outstanding member business loans to any one (1) ~~member borrower~~ or group of associated ~~members~~ borrowers shall not exceed twenty percent (20%) of the credit union's ~~reserves~~ net worth. (3-31-22)()

ii. ~~If any portion of a member business loan or loans is fully~~ secured by a one (1) to four (4) family dwelling 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. (3-31-22)()

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. ()

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. ()

~~de. 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~~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. (3-31-22)()

~~e. Loans classified shall be reserved as follows:~~ (3-31-22)

~~i. Loss loans at one hundred percent (100%) of outstanding amount;~~ (3-31-22)

~~ii. Doubtful loans at fifty percent (50%) of outstanding amount; and~~ (3-31-22)

~~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.~~ (3-31-22)

032. Prohibitions Ineligible Borrowers. A credit union may not ~~make grant~~ member business loans to the following ~~nonvolunteer, senior management employees, or to any associated member or immediate family member of such employees:~~ (3-31-22)()

a. ~~The credit union's chief executive officer; typically this individual holds the title of president, treasurer, or manager.~~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; (3-31-22)()

b. ~~Any assistant chief executive officers; often the assistant manager.~~Any person meeting the definition of an associated borrower with respect to persons identified in Subsection 040.02.a. of this rule; or (3-31-22)()

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.~~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. (3-31-22)()

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. ()

041. -- 049. (RESERVED)

050. NONPREFERENTIAL TREATMENT.

01. **Nonpreferential Treatment.** ~~The rates, terms, and conditions on any loan or line of credit either made to, or endorsed or guaranteed by~~ requirement of extending credit on “substantially the same terms as those prevailing...”, found in Section 26-2119(2), Idaho Code, is also applicable to: (3-31-22)(____)

a. ~~An official~~ Immediate family members of those persons listed in Section 26-2119(2), Idaho Code; (3-31-22)(____)

b. ~~An immediate family member of an official; or~~ 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. (3-31-22)(____)

e. ~~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, cannot 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.~~ (3-31-22)

051. -- 059. (RESERVED)

060. ~~PROHIBITED FEES, COMMISSIONS, COMPENSATION~~ **PROHIBITION ON COMMISSION FOR MAKING LOANS.**

~~A credit union may 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 040.03 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.~~ 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. (3-31-22)(____)

061. -- 999. (RESERVED)

IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 26-31-103, 26-31-204, and 26-31-302, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking was conducted pursuant to the [Executive Order 2020-01](#), “Zero-Based Rulemaking”, for the purpose of engaging in a thorough retrospective review of the cost and benefit of an existing rule. As a result, the proposed changes reduce regulatory burden by removing outdated requirements.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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 resulting from this rulemaking: This rulemaking will not impact the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2023 Idaho Administrative Bulletin, [Volume 23-8, pages 12 and 13](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Idaho Code § 26-31-102 defines Regulations X and Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act for incorporation into the Idaho Residential Mortgage Practices Act and Idaho Mortgage Rules pursuant to that Act. This proposed rule promotes consistency in state and federal mortgage-related laws so that Idaho mortgage licensees are not faced with an untenable requirement of complying with conflicting state and federal laws.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anthony Polidori at (208)-332-8060.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

Anthony Polidori
Deputy Director
Idaho Department of Finance
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Boise, ID 83714
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Fax: (208) 332-8099
Email: anthony.polidori@finance.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-2301
(ZBR Chapter Rewrite)

12.01.10 – RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY.

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. ()

001. SCOPE.

These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ()

002. -- 004. (RESERVED)

005. INCORPORATION BY REFERENCE.

For the purposes of the Act and these rules the full text of the following are incorporated by reference: ()

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, ~~2020~~ 2024. 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> <https://www.govinfo.gov/content/pkg/USCODE-2021-title12/pdf/USCODE-2021-title12-chap27.pdf>. (3-31-22)()

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, ~~2020~~ 2024. 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> <https://www.ecfr.gov/current/title-12/chapter-X/part-1024>. (3-31-22)()

03. The Truth in Lending Act. As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, ~~2020~~ 2024. 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> <https://www.govinfo.gov/content/pkg/USCODE-2021-title15/pdf/USCODE-2021-title15-chap41-subchapI.pdf>. (3-31-22)()

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, ~~2020~~ 2024. 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> <https://www.ecfr.gov/current/title-12/chapter-X/part-1026>. (3-31-22)()

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. ()

006. DEFINITIONS.

In addition to the terms defined in the Idaho Residential Mortgage Practices Act, the following definitions apply: ()

01. ~~Act~~ Advertising. ~~The Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code~~ 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. (3-31-22)()

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. ()

03. Closing. 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 covered person to complete such process. ()

04. Covered Person. A person who has been issued a license, pursuant to the Act, or a person required to be licensed under the Act. ()

~~007. — 039. (RESERVED)~~

~~040. DECEPTIVE ADVERTISING.~~

~~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 covered person: (3-31-22)

~~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 covered person. (3-31-22)~~

~~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 covered person. (3-31-22)~~

~~c. Using an address in advertising at which the covered person conducts no mortgage brokering, mortgage lending, or mortgage loan origination activities or for which the covered person does not hold a license. (3-31-22)~~

~~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. (3-31-22)~~

~~04107. -- 049. (RESERVED)~~

050. WRITTEN DISCLOSURES.

~~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 covered person 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. (3-31-22)

021. 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 covered person 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. ()

051. RESTRICTIONS ON FEES.

If a covered person 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: ()

01. Application Fee. An application fee shall include only the actual costs incurred by a covered person in connection with the taking of an application and transcribing application information. ()

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 covered person to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the covered person 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. ()

052. -- 059. (RESERVED)

060. PROHIBITED PRACTICES.

It is a prohibited practice for any covered person in connection with offering or providing services authorized under the Act, to: ()

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: ()

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

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. ()

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

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. ()

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. ()

04. Engage in Deceptive Advertising. Engage in any deceptive advertising ~~as set forth in Section 040 of these rules, including:~~ (3-31-22)()

a. 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 covered person. ()

b. 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. ()

~~**061. -- 089. (RESERVED)**~~

~~**090. BORROWERS UNABLE TO OBTAIN LOANS.**~~

~~If, for any reason, a covered person 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 covered person 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 covered person shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing. (3-31-22)~~

~~**091. -- 999. (RESERVED)**~~

12.01.10 – Rules Pursuant to the Idaho Residential Mortgage Practices Act

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the materials of the differences between the materials previously incorporated by reference in statute that are currently in full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here:

IDAPA 12 – DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

Docket no. 12-0110-2301

The Idaho Residential Mortgage Practices Act (Act), Idaho Code § 26-31-101 *et seq.*, incorporates provisions of the federal Real Estate Settlement Procedures Act, codified in 12 U.S.C. section 2601 *et seq.*, the federal Truth in Lending Act (TILA), codified in 15 U.S.C. sections 1601 *et seq.* and Regulations X and Z as issued by the federal Consumer Financial Protection Bureau. Provisions of the federal Truth in Lending Act, the Real Estate Settlement Procedures Act, and Regulation Z were amended during the past year and these amendments should be incorporated into the Idaho rules. This is done to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules whether or not the Department incorporates them by reference.

The following summarizes changes to incorporated material since January 1, 2019:

- **The Real Estate Settlement Procedures Act** – 12 U.S.C. 2609, *et seq.*
 - **January 2021** – Amended to address disclosure provisions related to a charitable mortgage transaction.
- **The Truth in Lending Act** – 15 U.S.C. 1601, *et seq.*
 - **January 2021** – Amended to address disclosure provisions related to a charitable mortgage transaction.
- **Regulation X** – 12 CFR 1024, *et seq.*
 - **July 2020** – Amended to require loss mitigation procedures for COVID-19 related hardships.

- **August 2021** – Final Rule to Add Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X.
 - **April 2023** – Effective date of amendments to official commentary that interpret the requirements of Regulation X to reflect a change terms used for points of contact at the Consumer Finance Protection Bureau.
- **Regulation Z** – 12 CFR 1026, *et seq.*
- **April 2020** – Application of Application of Certain Provisions in the TILA-RESPA Integrated Disclosure Rule and Regulation Z Right of Rescission Rules in Light of the COVID-19 Pandemic
 - The Bureau of Consumer Financial Protection (Bureau) issued this interpretive rule to provide guidance to creditors and other covered persons involved in the mortgage origination process in light of the COVID-19 pandemic.
 - **June 2020** – Truth in Lending (Regulation Z); Determining “Underserved” Areas Using Home Mortgage Disclosure Act Data
 - The CFB issued this interpretive rule to provide guidance about the way in which it determines which counties qualify as underserved for a given calendar year.
 - **June 2020** – TILA Higher-Priced Mortgage Loan Escrow Rule
 - This rule amended Regulation Z (Truth in Lending) to implement statutory changes made by the Dodd-Frank Act that lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained. The rule also exempts certain transactions from the statute’s escrow requirement.
 - **October 2020** – Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Extension of Sunset Date
 - The Bureau amended Regulation Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer’s application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z.
 - **December 2020** - Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition
 - This final rule amended the General QM loan definition in Regulation Z. Among other things, the final rule removes the General QM loan definition’s 43 percent DTI limit and replaces it with price-based thresholds.

- **December 2020** – Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition
 - The CFPB issued this final rule to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements, are held in portfolio by the originating creditor or first purchaser for a 36-month period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements.

- **April 2021** – Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Delay of Mandatory Compliance Date
 - This final rule delays the General QM Final Rule’s mandatory compliance date to October 1, 2022.

- **August 2021** – Truth in Lending (Regulation Z); Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements
 - This interpretive rule clarifies certain Regulation Z timing requirements in light of legislation that designated “Juneteenth National Independence Day, June 19” (Juneteenth) as a legal public holiday.

- **August 2021** – Technical Specifications for Credit Card Agreement and Data Submissions Required under TILA and the CARD Act (Regulation Z)
 - The Bureau is issuing technical specifications for credit card agreement and data submissions required under TILA and the CARD Act.

- **December 2021** – Facilitating the LIBOR Transition (Regulation Z)
 - The Bureau of Consumer Financial Protection (Bureau) is amending Regulation Z, which implements the Truth in Lending Act (TILA), generally to address the anticipated sunset of LIBOR, which is expected to be discontinued for most U.S. Dollar (USD) tenors in June 2023.

- **October 2022** – Truth in Lending (Regulation Z) Threshold Adjustments
 - This final rule increases the dollar threshold for certain exempt consumer credit transactions under Regulation Z from \$61,000 to \$66,400, effective January 1, 2023.

- **October 2022** – Appraisals for Higher-Priced Mortgage Loans Exemption Threshold Adjustments
 - This final rule increases the dollar threshold exempting certain credit extensions from the special appraisal requirements for higher-priced mortgage loans from \$28,500 to \$31,000, effective January 1, 2023.

- **December 2022** - Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold
 - This rule amends Regulation Z (Truth in Lending) to implement certain amendments to the Truth in Lending Act made by the Dodd-Frank Act. This

rule amends the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect changes in the asset-size thresholds for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan.

- **December 2022** – Truth in Lending (Regulation Z) Annual Threshold Adjustments (Credit Cards, HOEPA, and Qualified Mortgages)
 - This final rule revises, as applicable, dollar amounts for provisions implementing TILA and amendments to TILA. The Bureau is adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index (CPI) in effect on June 1, 2022.
- **April 2023** – Facilitating the LIBOR Transition Consistent with the LIBOR Act (Regulation Z)
 - CFPB Issues Interim Final Rule and Requests Comments on Facilitating the LIBOR Transition Consistent with the LIBOR Act (Regulation Z).