



Compliance Bulletin 20-29

2020 Idaho State Legislative Wrap-up

The 2020 Idaho Legislative session ended nearly three months ago, and that seems like ages ago given all that has happened since March. Despite the stay-at-home orders, business closures and general upheaval in our personal and business lives, there is much to celebrate in terms of Idaho credit unions' legislative success this year.

During the session, the NWCUA Advocacy team shared the work that you are doing for your members and communities with statewide elected officials and legislators to ensure that they know and see the results of the credit union motto, "people helping people."

As a result, the NWCUA's Advocacy team, supported by the leadership and participation of numerous credit union advocates, successfully shepherded two significant pieces of legislation to Governor Little's desk for signature, while also providing significant support and assistance in the passage or advancement of several other legislative measures that will benefit Idaho credit unions and their members.

Updates to the Idaho Credit Union Act

SB 1301 – Updates to the Idaho Credit Union Act (NWCUA Sponsored)

Following the efforts of the 2019 Idaho State Issues Work Group (I-SIWG) and the NWCUA Board's approval of the policy agenda for the next several years, your Advocacy Team went to work negotiating the further modernization of the Idaho Credit Union Act in order to improve the operating environment for Idaho credit unions. Focusing on the priorities of the I-SIWG, and through on-going discussions with Idaho Department of Finance and several rounds of negotiation with the Idaho Banker's Association (IBA), we narrowed our legislation to update the statute in the areas of lending, investments, and fixed assets.

Below are brief summaries of the main amendments and additions to the Act as a result of SB 1301.

Sec. 26-2106 – Amendments

This section was totally repealed and replaced with a new section. The old version of Sec. 26-2106 section permitted the articles of incorporation and bylaws to be amended as provided in the bylaws, but first had to be approved by the Director of Finance and then put to a member vote. If approved by the members, the amendments would become effective once the Director was notified.

The new version of Sec. 26-2106 provides that the articles of incorporation and bylaws may be amended as provided by in the articles of incorporation and bylaws with the approval of the Director. The difference between the new version and the old is that the membership does not have to approve the amendments – only the board of directors has to approve them once the Director has approved. Amendments are deemed to be approved by the Director if the director does not deny them within 30 days following receipt of the proposed amendments. Amendments to the articles and bylaws must conform with existing Sec. 26-2105, which lays out the requirements for the organization of a credit union.

The new version also requires that upon approval by the Director and the credit union's Board, the credit union will deliver any amendments to the articles of incorporation to the Secretary of State, along with any necessary filing fees, for filing.

Amendments to the articles of incorporation or bylaws are effective upon written certification of board approval to the Director.

Sec. 26-2109 – Power to Acquire and Hold Real Property

This section was totally repealed and replaced with a new section. The old version was entitled "Limitations of Corporate Powers" and governed a credit union's power to own, hold or use any property or interest in property. The new version is longer and includes new requirements and definitions.

Net Worth and Aggregate Investment

To invest in fixed assets necessary or related to its operations the:

- Credit union's net worth must equal at least seven percent of total assets;
- Credit union's board must approve any investment in real property; and,
- Aggregate investment in fixed assets may not exceed seven and half percent of its total assets (the old version contained categories and imposed limits on each category).

The Director may, upon written application, waive any of the above limitations.

Property Acquired as Secured Lender

Both the old and new versions of the section allow a credit union to acquire property through foreclosure, deed in lieu of foreclosure, repossession, or other means in connection with protection or enforcement of the credit union's rights as a secured lender. Property acquired in this manner shall not be subject to the limitations noted above. The old version of the section prohibited a credit union from bidding a higher amount than necessary to satisfy its debts and costs at a sale on judgments, decrees, mortgage or deed of trust foreclosures under securities held by the credit; this limitation has been removed from the new version.

New Definitions

The new version of Sec. 26-2109 includes seven definitions:

- (a) "Abandoned premises" means premises previously used to transact credit union business but no longer used for that purpose. It also means premises originally acquired to transact future credit union business but no longer intended for that purpose.
- (b) "Fixed assets" means premises and furniture, fixtures, and equipment.
- (c) "Immediate family member" means a spouse, domestic partner, or other family member living in the same household.
- (d) "Partially occupy" means occupation and use, on a full-time basis, of at least fifty percent (50%) of each of the premises by the credit union.
- (e) "Premises" means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.
- (f) "Senior management employee" means the credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer.
- (g) "Unimproved land" or "unimproved real property" means:
 - i. Raw land or land without development, significant buildings, structures, or site preparation;
 - ii. Land that has never had improvements;
 - iii. Land that was improved at one time but has functionally reverted to its unimproved state; or
 - iv. Land that has been improved, but the improvements serve no purpose for the credit union's planned use of the property.

Premises not Currently Used to Transact Credit Union Business

The new version of Sec. 26-2109 contains provisions governing a credit union's acquisition of new premises, including unimproved land or unimproved real property.

- The credit union must initially occupy each premise within a reasonable period, but no later than six years after the date of acquisition. Credit unions may seek a waiver from the Director, and the Director's decision will be based on safety and soundness considerations.
- The credit union must make diligent efforts to dispose of abandoned premises and property obtained through foreclosure, deed in lieu of foreclosure, etc., seek to obtain fair market value and record its efforts to dispose of the premises or property. Further, it must complete a sale of such property within five years.
- An additional five-year extension may be obtained from the Director based on good faith efforts to sell or that disposal in the first five-year period would be detrimental to the credit union. If the second five-year period is approved, the credit union must write down the value of the premises or property by twenty percent from the value at the end of the first five-year period, at the end of each year in the second five-year period. Value at the beginning of the second five (5) year period shall be the lower of cost or market value as determined pursuant to appraisal.

Restrictions on Purchases/Leases from Officials, Employees and Business Associates

- Without a waiver, the credit union must not acquire (except for foreclosure, deed in lieu of foreclosure, etc.), or lease for one year or longer, premises from any of the following:
 - (a) A member of the credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual;
 - (b) A corporation in which a member of the credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is an officer or director or has a stock interest of ten percent (10%) or more; or
 - (c) A partnership, limited liability company, or other entity in which a member of the credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is a general partner or a limited partner or entity member with an interest of ten percent (10%) or more.
- A credit union must not lease for one year or longer premises from any of its employees if the employee is directly involved in acquiring premises, unless the credit union's board of directors determines the employee's involvement is not a conflict of interest.
- A waiver request must fully explain why it is necessary. The Director's decision will be based on safety and soundness consideration and whether a conflict of interest exists.

The new version does not specifically address furniture, fixtures, computer systems, or the use of depreciated costs for property on its books.

Sec. 26-2119 – Loans (Replaces the repealed 26-2119 – Loans to Members)

The new version of Sec. 26-2119 permits non-members to serve as co-borrower or guarantor on a loan to a member of the credit union, which was previously prohibited.

Loans to Directors, Executive Officers, Supervisory Committee Members and Credit Committee Members

- As did the old version, the new version prohibits loans to directors, executive officers, and supervisory and credit committee members unless the extension of credit is made on substantially the same terms available at that time to credit union members. The new version of Sec. 26-2119 defines "executive officer"; prohibits directors, executives, and supervisory/credit committee members from approving or disbursing a loan in which such person has a direct or indirect financial interest.

Additionally, the new version:

- Eliminates the requirement for two-thirds written agreement of all board members and credit committee members before a loan is made to members of the credit union's official family, where such loan or aggregate of such loans exceed the unsecured loan limit of the credit union plus the unencumbered share balance of the borrowing official.
- States that credit extensions made pursuant to a benefit or compensation program are permissible under certain circumstances.
- Provides that a credit union may make loans to another credit union, federal credit union, or out-of-state credit union. (Old Sec. 26-2120, which placed limitations on such loans was repealed.)
- States that a credit union may purchase loans made to its members if the credit union's underwriting policies would have permitted it to originate the loans.
- Provides that credit unions may purchase participation loans under certain circumstances, and in accordance with board-approved policies, including those that it would be empowered to grant, loans from a liquidating credit union, student loans, and real estate-secured loans.
- Provides that credit unions may sell in whole or in part, to any source, a loan to its members within the limitations of the board of directors' written sale policies, provide that the sale is approved by the board or investment committee, and a written agreement and schedule of the obligations covered by the agreement is kept at the credit union.
- States that A credit union may purchase a participation interest in a loan from a credit union, credit union service organization, federally insured financial institution, and any state or federal government agency and its subdivision only if the loan is one the purchasing credit union is empowered to grant and adhere to several requirements, which are in brief:
 - (a) Complies with all requirements as if the credit union had made the loan(s);
 - (b) The purchaser executes a written agreement that meets minimum requirements;
 - (c) Originating lender retains a 10% percent interest in the loan throughout its life;
 - (d) The borrower becomes a member of either the selling or purchasing credit union before the purchase of the loan;
 - (e) The purchase complies with the purchasing credit union's internal written policy, which meets enumerated minimum requirements;
 - (f) A waiver is available to limits on the aggregate amount of loan participations that may be purchased with respect to a single borrower, or group of associated borrowers (15%); and,
 - (g) Sets the minimum requirements for a participation agreement:
 - Properly executed by all parties under applicable law;
 - Properly authorized by the credit union's board or delegated committee or executive;
 - Be retained in the original or as a copy at the credit union; and,
 - Address the specific participation or participations being purchased; include the interest that the originating lender will retain over the life of the loan; the location and custodian for original loan documents; conditions for accessing information about the loan(s) performance; an explanation of the duties and responsibilities of parties with respect to all aspects of administration of the loan; and, circumstance under which participants may replace the servicer.
- Provides that real estate-secured loans granted by non-federally insured credit union will comply with the appraisal requirements for federally insured credit unions; and, the Director may require an appraisal at any time to serve safety and soundness.
- Retains from the old version of 26-2119 that Any officer, director, supervisory committee member, or credit committee member who knowingly permits a loan to be made or participates in a loan to a nonmember of the credit union, unless the loan to the nonmember is otherwise allowed in this chapter or by a rule pursuant to this chapter, shall be primarily liable to the credit union for the amount illegally loaned. The illegality of such loan shall not be a defense in any action by the credit union to recover the amount loaned.

The new section provides that:

- The new limit to one borrower and any associated borrowers is \$100,000 or 15% of the credit union's net worth, whichever is greater, without the approval of the Director.
- The limit does not apply to a corporate credit union.
- A definition for when two borrowers are "associated".
- The loan limit does not apply to any loan that is fully secured by shares and deposits.

26-2120A – Limit on Loan Maturity

Loan maturities which appeared in the old version of Sec. 26-2119 have been moved, amended, and placed in new Sec. 26-2120A.

- The new section preserves the existing 15-year general limit and then lays out numerous exceptions. Those exceptions are, in brief:

20-year loans

- (a) Certain purchases of manufactured homes,
- (b) A second mortgage loan or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage (secured by the residential dwelling that is the residence of the member); and,
- (c) A loan to finance the repair, alteration, or improvement of a residential dwelling that is the residence of the member.

30-year loans

Residential real estate loans on one-to-four family dwellings used as second or vacation residences, including an individual cooperative unit, and that are secured by a first lien upon such dwelling.

40-year loans

Residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, subject to certain conditions.

No Set Maturity

Lines of credit are not subject to a maturity limit except as determined by contract between the credit union and the member.

26-2127 – Investment of Funds (Replaces the repealed Sec. 26-2170 – Investments)

The new version of Sec. 26-2127 requires the credit union's board of directors to establish a written investment policy consistent with the chapter and other applicable laws and regulations. The new section greatly modernizes and expands the permissible investment types and permits the Director to authorize credit unions to purchase investments not listed by rule or upon written application. It also addresses purchased investments that become impermissible at a later date, sets a limit of 25% of a credit union's net worth as the maximum allowable investment in an obligor or affiliate of the obligor (with some exceptions), and requires that the credit union maintain records demonstrating "evidence of prudent business judgment exercising the investment powers" granted.

26- 2130 – Dividends

Section 26-2130 was repealed and replaced with a new section with the same title. The new section carries over much from the old version but also includes new provisions.

- After allocation to required reserves, the board of directors may, at the end of any dividend period duly established, declare a dividend to be paid on shares or share certificates from undivided earnings as the bylaws may provide. Dividends may be paid at various rates, or not paid at all, with due regard to the conditions that pertain to each class of share.
- Subject to the approval of the board of directors, accounts closed between dividend periods may be credited with dividends at the rate set by the board of directors.

- Extraordinary dividends must be calculated on a rational means determined by the board of directors. For purposes of this section, "extraordinary dividends" means all irregularly scheduled and declared dividends.

26-2133 – Reports -- Financial and Statistical Data (Replaces the repealed Sec. 26-2133 – Reports)

New Sec. 26-2133 repeals the requirements to file a year-end report, the \$10 per day penalty for late filing, and other timing requirements. Instead, it imposes the requirement for credit unions to file with the Department any "financial and statistical report or other information that a federally insured state-chartered credit union is required to file" as required by the National Credit Union Administration. Each such report must be certified by the principal operating officer. Credit unions may be required to file additional reports as required by the Director.

Where can I read the bill for myself?

You can find the bill on the Idaho State Legislature's website [here](#).

When does the bill become effective?

The bill becomes effective on July 1, 2020.

HB 473a – Updates to Idaho Credit Union Act (Department of Finance Sponsored)

Following the collective work and negotiations of the 2017 and 2019 I-SIWG groups, the Idaho DoF proposed Agency-based updates to the Idaho Credit Union Act, including negotiated modifications to their statutory enforcement powers, a reduction in the mandatory 18-month examination cycle, and updates to the trust powers statute.

Below are brief summaries of the main amendments and additions to the Act as a result of HB 473.

Sec. 26-2136 – Fees (Formerly Examinations and Fees)

Sec. 26-2136 has been amended to remove language related to credit union examinations.

Sec. 26-2136A – Examinations and Investigations Reports -- Access to Records -- Oaths -- Subpoenas

- The new section maintains the current requirement of at least one examination once every 18 months, but allow the Director to set a less frequent examination schedule, when "a less frequent examination schedule will satisfactorily protect the financial stability of the credit union and will satisfactorily assure compliance with the provisions" of the Act. As in the past, the Director may examine a credit union more frequently should it be deemed necessary.
- The new section retains the requirement that an examination report be provided to the president or chief executive of the credit union, but it adds that the report shall be provided to the chair of the board of directors as well. The report must be considered by the board at the first meeting after the examination report has been provided. As in the past, the board must provide the Director with a reply to the report with in 15 days of the meeting.
- The new section requires that each credit union, including out-of-state and foreign credit unions permitted to operate in Idaho (and associated staff, officers, etc.) give full access to the credit union's records and information under its control and access to personnel.
- The new section grants the Director the authority to appraise and revalue credit union investments and to require the credit to charge off or set up special reserves for loans, investments, and other assets.
- The new section grants the Director the authority to examine and investigate the affairs of a(n):
 - (a) Out-of-state or foreign credit unions operating in Idaho;
 - (b) Nonpublicly held organizations in which a credit union has a material investment;
 - (c) Publicly held organization in which capital stock or equity is controlled by a credit union;

- (d) CUSO or subsidiary of a CUSO, in which a credit union has an interest;
- (e) An organization that is not a credit union, out-of-state credit union, federal credit union, or foreign credit union and that has a majority interest in a credit union service organization in which a credit union has an interest;
- (f) Sole proprietorship or organization primarily in the business of managing one or more credit unions;
- (g) Person or business providing any of the following services to a credit union or to a credit union service organization:
 - (i) Data processing services;
 - (ii) Activities that support financial services, including but not limited to lending funds transfer, fiduciary activities, trading activities, and deposit-taking; and
 - (iii) Internet-related services, including but not limited to web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring; or
- (h) Corporation or other business entity that provides alternative share insurance in accordance with section 26-2153, Idaho Code.

- The new section permits the Director may administer oaths, examine under oath, and issue subpoenas in connection with examinations and investigations.
- Under the new section, the Director may accept reports either from an examiner authorized to examine a credit union or other types of credit unions or financial institutions, as well as reports from an accountant under certain conditions.

26-2136B – Examination Reports and Specified Other Information Confidential -- Exceptions -- Penalty

- The new provision provides widely for the confidentiality of communications and information which relate in any manner to the examination or condition of the credit union and investigations. Reports and parts of reports are confidential as well.
- Some qualifications and exceptions to the confidentiality requirements exist and maybe claimed by either the Department or the credit union. The section includes specific entities to which confidential information may be disclosed.
- Knowing violations of the provision in the section are considered misdemeanors.

26-2136C – Disclosure of Confidential Information by the Department -- Penalty

This new section lays out the exceptions under which the Department and its representatives may disclose confidential information. Violations of the prohibition on disclosing confidential information by the Department or its representatives is a felony, and conviction shall result in forfeiture of office or employment.

26-2140 – Cease and Desist Order -- Penalty

The amendments to Section 26-2140 add procedures and details to existing law for why and how the Director may issue a cease-and-desist order in response to violations or practices. It also institutes a civil money penalty (\$1,000) that may be assessed for each day that a violation continues.

26-2140B – Suspension or Removal of Directors, Supervisory Committee Members, Officers, or Employees -- Prohibition of Future Employment

Sec. 26-2140B is a new section that lays out and provides for enforcement powers and procedures for the removal of directors, committee members, officers, and employees. It also provides that a person who has been removed is prohibited from being employed by a credit union supervised by the Director in the state of Idaho except as permitted by the Director. A person subject to a prohibition order may appeal.

26-2141 – Appointment of Receiver -- Conditions -- Proceeding -- Bond -- Reporting Schedule -- Subrogation of Federal Agency to Right of Deposit Owners (Replaces repealed Sec. 26-2141 – Suspension)

This new section lays out the reasons and procedures for the Director to apply for and place the credit union into receivership and defines the term “insolvent”. It also provides for the subrogation of the federal agency or private share insurer to the rights of the owners of the deposits against the closed credit union.

26-2141A – Receive -- Duties -- Powers

The new section lays out the powers and duties of a receiver appointed under Sec. 26-2141.

26-2142 – Voluntary and/or Involuntary Liquidation

The section has been amended to remove references to the Idaho Credit Union League stabilization fund.

26-2151 – Custodial Accounts (Formerly Credit Union as Trustee)

The section has been amended to broaden the ability of credit unions to serve as custodian or trustee, particularly with regard to new types of tax-advantaged savings plans authorized under the Internal Revenue code or Chapter 30, title 63, Idaho Code.

26-2157 – Authority of Director to Call and Attend Special Meeting of the Board

This new section has been added to authorize the Director to require and attend a special meeting of the board of a credit union, if an examination of the credit union results in a composite capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk (CAMELS) rating of "3," "4," or "5." The section also provides procedures for the Director to request the meeting, set the time of the meeting, and to require the attendance of the credit union's directors.

Where can I read the bill for myself?

You can find the bill on the Idaho State Legislature's website [here](#).

When does the bill become effective?

The bill will become effective on July 1, 2020.

Other Enacted Legislation with an Impact on Credit Unions

HB 411 – Lienholder Notification on Towing

Many Idaho credit unions have expressed concerns about the challenges of equitable notification when a vehicle, subject to a lien, is towed and remains unrecovered by the owner. The NWCUA Advocacy Team worked with our member credit unions and the Chairman of the House Transportation Committee, Joe Palmer (R - Meridian - 20), to draft legislation that would require towing companies to notify financial institutions when a vehicle is towed from private or posted property, and it remains unrecovered after 72 hours. HB 411 ensures notification is provided to lienholders when a vehicle is towed and remains unrecovered.

Where can I read the bill for myself?

The bill can be found on the Idaho State Legislature's website [here](#).

When does the bill become effective?

The bill will become effective on July 1, 2020.

HB 589 – First-Time Homebuyer Savings Accounts

As a result of member and NWCUA advocacy efforts to include language in the update to the Idaho Credit Union Act in HB 473, Idaho credit unions will have the ability to offer tax exempt, first-time homebuyer saving programs retroactive to January 1, 2020. Through this program, first-time homebuyers can save up to \$15,000 for individuals or \$30,000 for married-couples, state tax-free, on an annual basis. The funds must be used to purchase a “first home” within the State.

While there are several restrictions and requirements on account owners, credit unions are only required to:

- Report account withdrawals to the Idaho Tax Commission within 90 days on a form to be provided by the Commission; and
- As with all other interest-bearing accounts, provide a copy of the account holder’s 1099-INT to the Idaho Tax Commission, in the normal course of information reporting.

*NOTE: The Tax Commission is completing work on the form that financial institutions will use to report account withdrawals, and it should be available on the Commission’s website soon.

Where can I read the bill for myself?

The bill can be found on the Idaho State Legislature’s website [here](#).

When will the bill become effective?

The bill became effective upon passage and is retroactive to January 1, 2020.

HB 464 – Bankruptcy – Increase in Homestead Exemption & Personal Property Exemption

This legislation increased the fixed dollar value of the homestead exemption in debt collection activities and bankruptcy proceedings from \$100,000 to \$175,000. Additionally, the bill provides increases in the dollar value exemption for various other kinds of personal property.

Where can I read the bill myself?

You can find a copy of the bill on the Idaho State Legislature’s website [here](#).

When will the bill become effective?

The bill became effective for any bankruptcy petitions filed on or after March 23, 2020.

SB 1264 – Self-Storage Facilities Contract and Operation Update

While not imposing any requirements on credit unions, SB 1264 modernizes the statute establishing the ownership and proper operation of self-storage facilities, includes a significant re-write of standard rental agreements, and most importantly for credit unions, includes a requirement that lienholders receive notice of any liens or sales. Earlier drafts included the ability to tow and sell abandoned vehicles with minimum notification to lienholders. The NWCUA, in cooperation with the Idaho banking community, requested the removal or revision of several of the aforementioned sections as well as additional notification to lienholders to allow credit unions the opportunity to recover vehicles or manage the recovery of vehicles, prior to towing and sale.

Where can I read the bill for myself?

You can find a copy of the bill on the Idaho State Legislature’s website [here](#).

When will the bill become effective?

The bill we become effective on July 1, 2020.

If you have questions about this communication, contact the NWCUA’s compliance team at 800.546.4465, or compliance@nwcua.org.