



CREDIT UNION COMMISSION MEETING

Credit Union Department Building
914 East Anderson Lane
Austin, Texas

October 17, 2014

AGENDA

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I.	Adjournment	

In the event the Commission does not finish deliberation of an item on the first day for which it was posted, the Commission might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Linda Clevlen by mail, telephone, or email.

A

CALL TO ORDER

TEXAS CREDIT UNION COMMISSION MEMBERS

- *Manuel “Manny” Cavazos, Chair*
- *Gary L. Janacek*
- *Rob Kyker*
- *Sherri B. Merket*
- *Allyson “Missy” Morrow*
- *Kay Stewart*
- *Gary D. Tuma*
- *Vik Vad*
- *A. John Yoggerst*

Legal Counsel

- *Nancy S. Fuller*

Staff

- *Harold E. Feeney*
- *Robert N. Baxter II*
- *Stacey L. McLarty*
- *Isabel Velasquez*

**FUTURE CREDIT UNION
COMMISSION MEETING DATES**

Friday, February 20, 2015

Friday, June 19, 2015

Friday, October 16, 2015

All regular scheduled meetings will begin at 8:00 a.m. unless notified differently.

If a Commission Member has a conflict with any of the proposed dates, please contact Isabel Velasquez at (512) 837-9236.

B

CREDIT UNION COMMISSION MEETING MINUTES

A draft copy of the minutes for the June 20, 2014 meeting, and the corresponding follow-up action report, are located under **Tab B**.

RECOMMENDED ACTION: The Department requests that the Commission approve the minutes as presented.

RECOMMENDED MOTION: I move that the minutes of the Commission's regular meeting of June 20, 2014 be approved as presented.

**CREDIT UNION COMMISSION
MEETING MINUTES
JUNE 20, 2014**

A. CALL TO ORDER - ASCERTAIN A QUORUM – Vice Chairman Rob Kyker declared that a quorum was present and called the meeting to order at 8:00 a.m. in the conference room of the Credit Union Department office, Austin, Texas, pursuant to Chapter 551 of the Government Code. Other members present included Gary Janacek, Sherri Merket, Kay Stewart, and Vik Vad. Chairman Manuel “Manny” Cavazos was absent due to the untimely passing of a family member. John Yoggerst and Gary Tuma were absent due to a scheduling conflict. Assistant Attorney General Nancy Fuller was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner, Daniel J. Buckley, Deputy Commissioner, and Stacey McLarty, Assistant Commissioner and General Counsel. Vice Chairman Kyker appointed Isabel Velasquez as Recording Secretary. The Vice Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**June 9, 2014, TRD#2014004186**). Without objection, the Vice Chair reserved the right to rearrange agenda items as necessary.

❖ **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Vice Chairman Kyker invited public input on matters that were not scheduled items on today’s agenda for possible future consideration by the Commission.

- **Jeff Huffman – Vice President, Government Relations, Texas Credit Union Association.** Mr. Huffman indicated that the Association has received an increasing amount of negative feedback from its members

regarding the exam process and the time necessary to get approvals from the Department. He posed several questions and suggested that the Commission may want to consider a future agenda for the staff to provide an overview of the current exam process.

❖ **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES**

– Vice Chairman Kyker inquired if there were any requests or motions to excuse an absence. Mr. Vad moved to excuse the absences of Chairman Cavazos and John Yoggerst. Ms. Merket seconded the motion, and the motion was unanimously adopted.

B. RECEIVE MINUTES OF PREVIOUS MEETING (February 21, 2014)

The Vice Chairman referred the members to the draft minutes contained in the agenda packet. Ms. Stewart moved for approval of the minutes of February 21, 2014 as presented. Ms. Morrow seconded the motion, and the motion was unanimously adopted.

C. COMMUNICATIONS

The Vice Chairman referred members to the correspondence contained in the agenda packet. Commissioner Feeney called attention to the results of the State Office of Risk Management on-site consultation as well as the action plan to deal with the issues identified. In addition, he provided an update on the Higher Education Coordinating Board's progress on its endeavor to obtain video conferencing capabilities. And finally, Mr. Feeney briefly reported on the status of the mandatory SB 1681 training.

Mr. Janacek expressed doubts about the validity of the biennial Report on Customer Service that was included in the agenda packet. He made reference to a

groundswell of concerns and specifically noted that he had received numerous calls from all over the state distressed about issues related to examinations and other Department actions.

Mr. Vad questioned whether the surveys were submitted anonymously and suggested that participation may be curtailed if credit unions are uncomfortable providing criticism for fear of retaliation. He suggested that the Department may want to improve how it communicates that survey responses cannot be traced back to a particular credit union.

Commissioner Feeney indicated that several years ago the Department contracted with a third party to allow the Survey to be completed online to better maintain the confidentiality of respondents. He further noted that anonymity has always been stressed to ensure receipt of candid comments and suggestions but the Department would work to find ways to improve its communications on the matter. No formal action was taken.

D. COMMITTEE REPORTS

Rules Advisory Committee -- Ms. Merket, Committee Vice Chair, reported on the Committee's public meeting held on June 19, 2014. She provided an overview of all Committee recommendations:

(1) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification. Mrs. Merket explained it was the Committee's recommendation that the Commission adopt the proposed amendments to 7 TAC Section 91.501 as previously published in the *Texas Register*. She noted that no written comments were received on the proposal.

(2) Discussion, Consideration, and Possible Vote to Withdraw the Previously Published Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and Approve for Republication the Revised Proposed Amendments to 7 TAC Section 91.502. Mrs. Merket indicated, for clarity and uniformity purposes, it was the recommendation of the Committee that the previously proposed amendments to 7 TAC Section 91.502 be withdrawn and that a revised proposal be approved for republication.

(3) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit). Mrs. Merket noted it was the recommendation of the Committee that the Commission find the reasons for initially adopting the Rules 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent

Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit) continue to exist and that these rules be readopted without change.

(4) Discussion, Consideration, and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.704. Mrs. Merket explained it was the recommendation of the Committee that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.704. She noted that the proposed amendments will clarify the maturity limits for certain real estate loans.

(5) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50g). Mrs. Merket indicated it was the Committee's recommendation that the Commission approve for publication and comment the proposed amendments to 7 TAC Sections 153.1, 153.5, 153.15 and 153.51. She further noted that the proposed amendments implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*.

(6) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.209 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures. Mrs. Merket explained it was the Committee's recommendation that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.209. She indicated that the proposed

amendments would permit the Department, in lieu of NCUA, to impose penalties against credit unions for failing to meet call report deadlines.

Mrs. Merket then made a motion on behalf of the Rules Committee that the Commission adopt the six recommendations of the Committee. A second was not needed and the motion passed unanimously.

(b) Commissioner Evaluation Committee – Chair Morrow briefly reviewed the procedures that will be used during the Commissioner’s FY 2014 performance review. No formal action was taken by the Commission.

E. UNFINISHED BUSINESS

(a) Discussion and Consideration of the Department’s FY 2014 Budget. Commissioner Feeney reported that in the first nine months operating income totaled \$2,849,856, approximately \$14,000 over budget. He also pointed out that the funds held in Contingency Fund Reserves as of August 31, 2013 were \$186,657 over the established cap. In accordance with Commission policy, he explained that those excess funds were used to balance the budget and reduce the operating fees for credit unions during fiscal year 2014.

During the same nine-month period, he noted that approximately \$2,995,488 was spent operating the Department, which is 93% of the year-to-date budget. Mr. Feeney also reported that there were no cost overruns on the parking lot project and project has been completed.

After a brief discussion, no formal action was taken by the Commission.

(b) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department. Deputy Commissioner Buckley reported that overall financial trends are positive as Texas credit unions continue to deal with the challenging economic environment. He noted that the current number of active state-chartered credit unions was 188, with total aggregate assets of \$31.6 billion. Mr. Buckley also highlighted various ratios and other financial statistics. After a brief discussion, no formal action was taken by the Commission.

F. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Ratify and Approve the Expenditure of Funds to Citibank in the Amount of \$688.12 for Disputed Charges Incurred on one of the Department's Corporate Liability Individual Bill Accounts. Commissioner Feeney noted that a hotel in Waco alleged that property damage was caused on September 27, 2013, due to negligence by an employee of the Department staying at the hotel while conducting a multi-day examination of a credit union on behalf of the Department. Charges for the alleged damage were placed on the Department's Citibank Central Liability Individual Billed Travel Card without authorization. The Department enlisted assistance from the Attorney General's Tort Claims Division and the Comptroller's office to resolve this matter. The hotel eventually reduced the charges to the Department account, maintaining that the Department was responsible for the remaining charges. Although the Department disagreed with the remaining charges, it was determined that paying the claim amount would be less costly than disputing it.

After a short discussion, Mr. Janacek moved that the Commission ratify the May 6, 2014 payment to Citibank in the amount of \$688.12. Ms. Merket seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Approve the Department's Operating Plan and Budget for Fiscal Year 2015.

Commissioner Feeney briefly noted that Section 16.003 of the Finance Code gives the Commission the exclusive responsibility for approving the Department's budget. He reported, in accordance with the budget policies and guidelines approved at the last meeting, a proposed FY 2015 Current Service Level budget of \$3,093,925. In addition, Mr. Feeney explained that consistent with the recently approved strategic plan, the Department was also presenting six new strategic initiatives for consideration. He further noted that each initiative stands on its own merit and the Commission has the discretion to pick and choose among the various initiatives as it deems appropriate.

Vice Chair Kyker opened the floor for comments or questions from the public on the proposed budget.

- **Jeff Huffman – Vice President, Government Relations, Texas Credit Union Association.** Mr. Huffman indicated that the Association that is not opposed to additional funding, staff or new approaches to how the agency fulfills its mandate; however, many of its credit union members have expressed concerns about the trend that the Department is becoming more like NCUA. He suggested that there should be standards and criteria established to monitor effectiveness of these additional resources.

Mr. Vad questioned the size of the budget increase should the entire proposal be adopted. He noted his preference for more graduated increases.

Mr. Janacek noted that he had a number of personnel issues and concerns relative to some of the new strategic initiatives, which might be better discussed in Executive Session.

Vice Chair Kyker conferred with Legal Counsel and announced that the Commission would hold an Executive Session to discuss certain personnel issues related to the Strategic Initiative #4 as provided under Section 551.074 of the Government Code.

G. EXECUTIVE SESSION

Vice Chairman Kyker rearranged the agenda items and called for an Executive Session at 8:57 a.m.

Vice Chairman Kyker reconvened the Open Meeting at 9:56 a.m.

F. NEW BUSINESS (continued)

(b) Discussion, Consideration, and Possible Vote to Approve the Department's Operating Plan and Budget for Fiscal Year 2015.

Vice Chairman Kyker called a brief a recess at 9:56 a.m.

Vice Chairman Kyker reconvened the meeting at 10:03 a.m.

After a lengthy discussion, Mr. Janacek moved that the Commission adopt the proposed Current Service Level Budget with the inclusion of the Strategic

Initiatives Number 1, 2, 3, and 6 for a total FY 2015 budget of \$3,411,170. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(c) Discussion of the Chair’s Appointments to the Commission’s Two Standing Committees (Rules and Commissioner Evaluation). With no objection, Vice Chairman Kyker tabled this item until the next meeting.

H. OTHER BUSINESS

Vice Chair Kyker reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for October 17, 2014 at 8:00 a.m. in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Vice Chairman Kyker adjourned the meeting at 10:14 a.m.

Rob Kyker
Vice-Chair

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

FOLLOW-UP ACTION REPORT CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 09-29-14)
<u>UNFINISHED BUSINESS</u>		
<u>June 20, 2014</u>		
7 TAC Section 91.501 Director Eligibility and Disqualification	Published in <i>Texas Register</i> as adopted rule	Published in <i>Texas Register</i> on 07-04-14
7 TAC Section 91.502 Director Fees and Expenses	Re-published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 07-18-14
7 TAC Sections 91.701, 91.703, 91.705, 91.706, 91.707, 91.708, 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, 91.718, 91.719, and 91.720	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 07-04-14
7 TAC Section 91.704 Real Estate Lending	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 07-04-14
7 TAC Section 91.209 Call Reports and Other Information Requests	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 07-04-14
7 TAC Sections 153.1, 153.5, 153.15, and 153.51 Home Equity Lending	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 07-04-14

C

COMMUNICATIONS

All other communication items relevant and material to the meeting are included under the appropriate tabs.

RECOMMENDED ACTION: No formal action is anticipated to be taken by the Commission. The correspondence is included for your consideration and direction.

SUNSET ADVISORY COMMISSION

STAFF STUDY

Self-Directed Semi-Independent Status of State Agencies

OCTOBER 2014



Sunset Advisory Commission

Senator Jane Nelson
Chair

Representative Four Price
Vice Chair

Senator Brian Birdwell

Representative Cindy Burkett

Senator Donna Campbell

Representative Harold V. Dutton, Jr.

Senator Juan “Chuy” Hinojosa

Representative Larry Gonzales

Senator Charles Schwertner

Representative Richard Peña Raymond

Dawn Buckingham, M.D.

Tom Luce

Ken Levine
Director

Cover Photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the north facade of the Capitol. The gardens in the foreground sit atop a 667,000 square foot underground structure, the Capitol Extension, which houses many legislators' offices and committee rooms. Photo Credit: Janet Wood

SELF-DIRECTED SEMI-INDEPENDENT STATUS OF STATE AGENCIES

**SUNSET STAFF STUDY
OCTOBER 2014**

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SUMMARY

SUMMARY

In 2001, the Legislature enacted the Self-Directed Semi-Independent (SDSI) Project Act and granted the Accountancy, Architecture, and Engineers boards SDSI status. Having SDSI status gives an agency the authority to operate outside of the appropriations process by making the agency entirely responsible for its own operations and expenses, including establishing its own budget and setting its fees accordingly.

From the beginning, oversight agencies and the Legislature had questions and concerns about the soundness of the policy decision to give state agencies so much independence, and whether or not the SDSI concept would prove effective. Proponents of the SDSI concept pointed to benefits such as agencies being able to offer higher salaries to recruit and retain more experienced staff and to respond more quickly to changing regulatory environments. However, these claims were tempered by the inherent risks associated with the significant loss of legislative oversight of these agencies.

The State's piecemeal approach to granting SDSI status limits needed and consistent oversight.

These ongoing questions and concerns led to several legislatively directed Sunset evaluations of the SDSI Act. In each of these evaluations, Sunset found no evidence of agencies running amok, as many feared. In fact, Sunset's evaluation of the SDSI Act in 2012 found that the three original SDSI agencies were operating appropriately and that the SDSI Act was working as intended. As such, the Sunset Commission recommended continuing the SDSI Act and removing its pilot project status in 2013, and the Legislature agreed. However, the Sunset evaluation also found that the SDSI Act did not provide needed safeguards to ensure ongoing oversight and prevent potential abuse. In response, the Legislature enacted several additional requirements to address these concerns. While these requirements addressed Sunset's concerns, they only applied to the three original agencies under the SDSI Act.

Since 2001, five other agencies gained SDSI status through provisions added to their own individual agency statutes, not through the SDSI Act (the Texas Department of Banking, Texas Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, Credit Union Department, and Texas Real Estate Commission, including the Texas Appraiser Licensing and Certification Board). This piecemeal approach to granting SDSI status has resulted in inconsistent statutory requirements among the SDSI agencies — in particular, the new safeguards that are only found in the SDSI Act — which limits needed and consistent oversight.

To address concerns with the inconsistent approach to granting SDSI status and continued reservations about the SDSI concept overall, the 83rd Legislature directed Sunset to conduct yet another SDSI study and report its results and recommendations to the Legislature prior to the 84th Legislative Session. This

SDSI Agencies Study

The Sunset Commission study must address the following aspects of the State's approach toward managing the SDSI status of state agencies:

- criteria and processes for determining whether a state agency should be given SDSI status or if this status should be revoked;
- appropriations issues related to transitioning an agency to SDSI status or back to regular agency status;
- reporting and measures to ensure adequate state oversight of SDSI agencies;
- procedures for SDSI agencies to contract with other agencies;
- procedures for Sunset review of SDSI status; and
- criteria for review of complaint procedures and disposition.

current study focuses on the State's approach to the SDSI process overall, specifically the criteria for granting and revoking SDSI status, requirements to ensure adequate oversight of SDSI agencies, and any appropriations issues related to transitioning an agency to and from SDSI status. The textbox, *SDSI Agencies Study*, details this charge. Several elements of the study have already been addressed, as SDSI status already authorizes SDSI agencies to contract for services, including with other state agencies, and criteria related to the review of complaints already exist as part of Sunset's model standards and would be applied during the review of an SDSI agency under a Sunset review.

Overall, this study determined that the State has an undefined and inconsistent approach to managing the SDSI process, which exposes the State to unnecessary risk. No single entity is responsible for administering and overseeing the SDSI process. Therefore, a comprehensive process with clearly-defined requirements for

obtaining and retaining SDSI status does not exist. Instead, the Legislature has granted SDSI status haphazardly, through various statutes, resulting in agencies gaining SDSI status with minimal vetting, and operating with different reporting requirements and inconsistent oversight. Without a single SDSI process in place, agencies will continue to ask for and potentially gain unique SDSI provisions within their own statutes that undermine effective oversight. Additionally, the concerns about accountability and oversight of SDSI agencies are magnified when considering granting SDSI status to health-related and larger licensing agencies, where fiscal mismanagement and lax regulation can directly affect the lives of thousands of Texans.

Summary of Results

As a result of this study, Sunset staff provides the Sunset Commission the following recommendations regarding the self-directed semi-independent status of state agencies.

- Require the Legislative Budget Board to develop and administer a process for obtaining SDSI status and overseeing SDSI agencies.
- Expand reporting and monitoring requirements of agencies subject to the SDSI Act to help improve oversight.
- Place all current SDSI agencies under the SDSI Act.
- The Senate Finance and House Appropriations Committees should consider establishing a moratorium on expanding SDSI status during the 84th Legislative Session.

STUDY RESULTS

The Lack of a Comprehensive and Consistent Approach to Self-Directed Semi-Independent State Agency Oversight Creates Risks for the State.

Background

In 2001, the Legislature enacted the Self-Directed Semi-Independent (SDSI) Agency Project Act, which exempts agencies with SDSI status from the General Appropriations Act and process, and other state laws inconsistent with this status. The SDSI agencies must still comply with other general state laws such as the Public Information and Open Meetings acts and with general state agency provisions.

Having SDSI status is meant to improve agency operations by providing greater flexibility in budget development, including allowing for higher salaries to recruit and retain staff, enabling agencies to respond more quickly to changing regulatory environments, and helping agencies address their capital needs, such as maintenance and information technology. The SDSI Act allows agencies to control their own funds and budgets to take care of their operations without having to request funding and receive budgetary oversight from the Legislature. SDSI agencies set their own fees and operate on the revenue collected, and their governing boards approve their annual budgets rather than the Legislature. The SDSI Act makes each agency responsible for all direct and indirect costs, including employee benefits and retirement costs, and costs incurred by any state agency, including work performed by the State Auditor's Office (SAO) and the Office of the Attorney General (OAG). In addition, each agency must annually remit a specified fixed sum to general revenue.

In 2001, the Legislature first granted SDSI status to the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and Texas Board of Architectural Examiners and, since that time, has granted SDSI status to five additional agencies, as shown in the textbox on the following page, *SDSI Timeline*. The Legislature has also granted very limited SDSI status to two divisions within the Texas Department of Insurance. However, as statutorily directed, this study only addresses granting, monitoring, and revoking the self-directed status of agencies.¹ While the first three agencies received SDSI status under the actual SDSI Act, the finance and real estate-related agencies received SDSI status through provisions in their enabling statutes, as shown in the textbox, *Sources of Agencies' SDSI Status*.²

In 2012, the Sunset Commission reviewed the SDSI Act and found that it should be continued but with additional safeguards to ensure adequate controls and oversight.³ The review also recommended that the Legislature consider temporarily halting further enactment of SDSI agency status until it can assess the overall approach to SDSI and the impact it has on effective agency oversight.

Sources of Agencies' SDSI Status

Chapter 427, Government Code (SDSI Act)

- Texas State Board of Public Accountancy
- Texas Board of Professional Engineers
- Texas Board of Architectural Examiners

Chapter 16, Finance Code

- Texas Department of Banking
- Texas Department of Savings and Mortgage Lending
- Office of Consumer Credit Commissioner
- Credit Union Department

Chapter 1105, Occupations Code

- Texas Real Estate Commission, including the Texas Appraiser Licensing and Certification Board

SDSI Timeline

2001 Legislature enacts SDSI Project Act and grants SDSI status to:

- Texas State Board of Public Accountancy
- Texas Board of Professional Engineers
- Texas Board of Architectural Examiners

2002–2003 Sunset Commission reviews the SDSI Act and recommends its abolishment. However, the Legislature continues the SDSI Act and requires Sunset to conduct a subsequent review in 2009, giving SDSI agencies more time to establish a record under the SDSI Act. (Senate Bill 1382, Armbrister)

2009 The Legislature postpones the Sunset review of the SDSI Act to align it with the review of the SDSI agencies in 2013. (House Bill 3249, Truitt)

Legislature grants SDSI status to the following agencies but not under the SDSI Act (House Bill 2774, Truitt):

- Texas Department of Banking
- Texas Department of Savings and Mortgage Lending
- Office of Consumer Credit Commissioner
- Credit Union Department

2011 Legislature grants SDSI status to the following agencies but not under the SDSI Act:

- Texas Real Estate Commission (Senate Bill 1000, Eltife)
- Texas Appraiser Licensing and Certification Board (Senate Bill 1000, Eltife)
- Two divisions within the Texas Department of Insurance (Senate Bill 1291, Hegar)

2012–2013 Sunset Commission reviews the SDSI Act and recommends its continuation. The Legislature continues the SDSI Act. (House Bill 1685, Price)

The Legislature requires Sunset to review the standards for granting SDSI status to state agencies and issue a report in 2015. (House Bill 1675, Bonnen)

As a result, the 83rd Legislature clarified that agencies under the SDSI Act must comply with all state laws that do not conflict with SDSI status and use the comptroller's Uniform Statewide Accounting System. In addition, the Legislature required these SDSI agencies to remit administrative penalties to general revenue and include more detailed budgetary and performance data in their annual reports. The Legislature also required the Sunset Commission to review the SDSI status of all agencies under the SDSI Act as part of their Sunset review and required SDSI agencies to pay these review costs.⁴

Further, the Legislature required Sunset, in consultation with the Legislative Budget Board (LBB), to perform another study on the SDSI status of state agencies to specifically address criteria for granting and revoking SDSI status, adequate oversight of SDSI agencies, and any appropriations issues related to transitioning an agency to and from SDSI status.⁵ This study fulfills these requirements but does not take on the more fundamental policy question of whether the SDSI concept is an appropriate suspension of legislative authority and oversight.

Results

Not having a consistent approach for granting, overseeing, and revoking SDSI status exposes the State to unnecessary risk.

Controlling revenues and expenditures, and holding agencies accountable for performance through the appropriations process is at the heart of legislative authority and oversight. The appropriations process allows the Legislature to closely monitor agency operations and set agency priorities through the power of the purse. For several of the current SDSI agencies, the appropriations process was the primary opportunity for the Legislature to oversee their operations and performance. In addition, the reporting requirements associated with the appropriations process, such as Legislative Appropriations Requests and performance measures, provided consistent and valuable information for other oversight entities such as LBB, SAO, and Sunset.

Removing agencies from the appropriations process and allowing them to operate without close fiscal oversight has potential risks, including the opportunity for abuse of this flexibility and possibility that without the appropriations process as a buffer, regulatory programs may be overly influenced by the regulated community that underwrites the cost of these agencies. Even though agencies with SDSI status tend to be smaller occupational licensing agencies, they can experience significant problems when operating outside of appropriations due to inadequate expertise and budgetary controls. For example, an SAO report found significant problems with the Texas Real Estate Commission's (TREC) ability to meet statutory requirements for developing accurate financial reports and correctly accounting for licensing revenues.⁶

In 2012, Sunset found that the disparate treatment of agencies caused by the State's incremental approach to granting SDSI status increases the risk that the State may lose control of one of the SDSI agencies.⁷ Based on Sunset staff's most recent assessment of the State's approach to SDSI, these concerns continue to exist, as do significant concerns with the SDSI concept overall. This report recommends implementing a more comprehensive and consistent method of evaluating, approving, and overseeing the SDSI status of state agencies to help mitigate these ongoing concerns as well as the potential risks associated with the loss of legislative oversight through SDSI.

- **Inconsistent approach to granting SDSI status.** As previously noted, only three of the eight SDSI agencies operate under the actual SDSI Act. The remaining five agencies gained SDSI status through independent legislation and ultimately their own separate statutes. While each agency must abide by similar SDSI statutory provisions, as time goes on, the potential for any of these statutes to be separately modified increases, allowing for numerous variations on the statutory SDSI requirements. For example, the previous Sunset review of the SDSI Act resulted in a significant expansion of reporting requirements to improve legislative oversight; however, the five agencies not under the SDSI Act are not subject to these requirements or

The Legislature has granted SDSI status to eight state agencies.

The State lacks a means to ensure each agency considered for SDSI status is capable of operating effectively outside the appropriations process.

No single entity is tasked with regular monitoring of SDSI agencies.

any of the other statutory improvements added to the SDSI Act. These different requirements and the potential for even greater statutory disparities in the future, make oversight difficult and agency comparisons impossible.

Having a disjointed approach to granting SDSI status not only leads to agencies operating under different statutory requirements but also fails to ensure that each agency being considered for SDSI status is uniformly and adequately screened for the ability to operate with fiscal restraint and effectively carry out its mission outside of the appropriations process. Currently, no process exists to thoroughly evaluate each agency's financial and operational performance to ensure it can function effectively under the considerable funding and oversight flexibility granted by SDSI status. Given concerns about the ability of current SDSI agencies to operate effectively, expansion of SDSI status to other professional licensing and regulatory agencies should be approached consistently and deliberately, with sufficient information and data to support the decision to grant SDSI status or not.

- **Lack of continuing oversight.** Currently, LBB, SAO, Sunset, and the Comptroller of Public Accounts have limited oversight and assistance responsibilities related to SDSI agencies. Oversight efforts are limited to reviewing reports, conducting audits, and providing technical assistance. However, no single entity is tasked with regular monitoring of SDSI agencies. The SDSI Act does require SAO to contract with SDSI agencies for financial and performance audits. However, the SDSI Act does not specify the frequency of these audits to ensure SAO regularly reviews these agencies to help identify any problems early, before they become potential liabilities for the State.⁸ While the Sunset Commission has authority to review SDSI status as part of each SDSI agency's regular Sunset review, the agencies typically only undergo Sunset review every 12 years. Sunset is not in a position to evaluate an agency's ongoing SDSI reports and performance data to detect problems sooner than every 12 years. Further, should an SDSI agency experience a significant problem of any sort, no single oversight entity is responsible for alerting the Legislature.

While the Legislature recently added more detailed reporting requirements to the SDSI Act, this review identified the need to further strengthen the requirements. For example, Sunset found that a lack of consistent, detailed budget information makes it difficult to understand SDSI agency budgets and accurately track the flow of revenues and expenditures. As noted in the SAO report, TREC did not provide a full accounting of its budget, omitting \$33.1 million in nonoperational pass-through revenues, expenditures, and transfers.⁹ While the SDSI Act requires SDSI agency budgets be developed using Generally Accepted Accounting Principles, this does not ensure budget documents are completed in standard formats and with sufficient detail to provide a clear picture of all revenues and expenditures. In addition, the SDSI Act currently requires the agencies to report their annual financial and performance data on November 1, but this date does not coincide with the required November 20 submission date for their annual financial report, creating additional work for the agencies and potentially undermining the

accuracy of the reported data.¹⁰ If the Legislature chooses to grant SDSI status to larger, more complex agencies, reporting budgetary and performance information with greater transparency and detail will become increasingly important.

- **No process for transitioning agencies back to the appropriations process.** While the future is uncertain, the potential exists for an SDSI agency to move back to the appropriations process. However, the SDSI Act provides no guidance on how to effectively transition an SDSI agency back to the appropriations process, and a defined transition process does not exist. The SDSI Act does not address key steps such as developing transitional budgets, performance measures, and standard oversight mechanisms. Without a well-defined transition process, if the Legislature were to revoke an agency's SDSI status, LBB would likely need to treat the agency as if it were newly created. While an SDSI agency would have a budget and some performance measures in place, LBB would likely have to create a baseline budget and new performance measures since SDSI agencies do not typically budget in the same way as appropriated agencies and are able to set their own performance measures.

Recommendations

Change in Statute

1.1 Require the Legislative Budget Board to develop and administer a process for obtaining SDSI status and overseeing SDSI agencies.

Under this recommendation, LBB would develop and manage the SDSI process for the state. The process would include developing and administering an application process that any state agency requesting SDSI status would be required to complete. Agencies that currently have SDSI status would be exempt from the application process. The process would also provide for ongoing oversight of all SDSI agencies and a consistent way to revoke SDSI status and transition agencies back to the appropriations process if needed.

SDSI Application Process

To be considered for SDSI status, a state agency would be required to:

- undergo an SAO financial and performance audit within four years of submitting the application for SDSI status;
- hold a public hearing on the need for SDSI status and decide by an official vote of the agency's governing board whether or not to apply to LBB for SDSI status; and
- submit an SDSI application to LBB, concurrent with the agency's Legislative Appropriations Request, four years in advance of when the SDSI status would become effective.

As part of the SDSI application, agencies must include a statement of need for SDSI status, including anticipated benefits and potential drawbacks; data showing a history of and continuing ability to operate effectively and protect the public's interest; documentation of adequate budgetary processes and controls; any fiscal impacts to other state accounts or other state agencies; and documentation showing that SDSI status would be revenue neutral to the State.

LBB would be authorized to determine the format of the application and could require any additional information to best evaluate an agency's ability to effectively operate under the SDSI Act, such as the financial expertise of board members and staff; certification that no conflicts of interest between board members, staff, and regulated professions or entities exist; any public and stakeholder comments related to the agency's SDSI status; and any affected contracts, facilities, properties, and leases. Based on its review and analysis of the application and other materials, LBB staff would make a recommendation to the appropriate committees on whether or not an agency should be granted SDSI status.

Ongoing Oversight

An agency with SDSI status must continue to demonstrate its effectiveness in carrying out its mission, including protecting the public's interest; financial soundness, including its ability to raise sufficient revenues and maintain operating reserves; ability to meet all financial obligations, including retirement and health benefit costs; and ongoing compliance with all application requirements and statutory reporting requirements, as well as a satisfactory audit history, including the agency's ability to remedy findings.

LBB would be expected to monitor SDSI agencies on a regular basis and authorized to develop any additional reporting requirements for this purpose. LBB staff could make recommendations to address any identified problems to the appropriate committees and the Legislature, including a recommendation to revoke an agency's SDSI status. LBB would be authorized, but not required, to recover the costs associated with the SDSI application process and any ongoing oversight.

SDSI Revocation Process

LBB would be statutorily authorized to develop a process and criteria to determine when recommending revocation of an agency's SDSI status to the Legislature is warranted. If the Legislature revokes an agency's SDSI status, LBB would facilitate the transition of an SDSI agency back to the appropriations process. The transition would likely include establishing a new budget pattern and performance measures; determining the placement and use of agency funds; developing any necessary riders; and evaluating the status and disposition of agency contracts, facilities, properties, and leased space. In addition to any SDSI revocation process that LBB develops, the Legislature could also revoke an agency's SDSI status based on a recommendation from the Sunset Commission through the agency's Sunset review.

1.2 Expand reporting and monitoring requirements of agencies subject to the SDSI Act to help improve oversight.

This recommendation would require all agencies operating under the SDSI Act to provide more complete budget information, including reporting all nonoperational and pass-through revenues and expenditures in a consistent format prescribed by LBB. The SDSI agencies would also be required to undergo an SAO financial and performance audit every six years to ensure more consistent and ongoing oversight, but this requirement would not prevent SAO from performing a risk-based audit any time it deems necessary. Finally, this recommendation would align the SDSI agency annual performance and financial data reporting date with the submission date of the annual financial report by changing the reporting date from November 1 to November 20. Requiring SDSI agencies to provide more detailed and transparent financial data would give oversight agencies, such as LBB, SAO, and Sunset, a more accurate picture of the SDSI agencies' financial status. Also, presenting this information in a consistent format would allow for easier comparison of SDSI agency performance.

1.3 Place all current SDSI agencies under the SDSI Act.

While not specifically required as part of this study, Sunset staff identified a significant risk in having essentially three different sets of SDSI statutes in place governing eight state agencies. To provide for more consistent administration and effective oversight of all SDSI agencies, the following finance and real estate-related SDSI agencies would be made subject to the SDSI Act and the separate SDSI provisions would be removed from their individual statutes.

- Texas Department of Banking
- Texas Department of Savings and Mortgage Lending
- Office of Consumer Credit Commissioner
- Credit Union Department
- Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board

Placing these agencies under the SDSI Act would ensure a single set of reporting requirements and controls applies to all SDSI agencies. Further, these agencies would be held to the same standard of remitting all administrative penalties to general revenue, as the agencies currently under the SDSI Act do. In addition, TREC would no longer pay annual retainers to SAO, OAG, and the State Office of Administrative Hearings. Instead, TREC would reimburse these agencies for any services rendered. Also, each agency's SDSI status would be evaluated as part of the agency's regular Sunset review.

Change in Appropriations

1.4 The Senate Finance and House Appropriations committees should consider establishing a moratorium on expanding SDSI status during the 84th Legislative Session.

This recommendation expresses the intent of the Sunset Commission that the Senate Finance and House Appropriations committees temporarily suspend granting SDSI status to any other state agencies until the Legislature is able to adopt a more comprehensive and consistent approach for managing the SDSI process.

Fiscal Implication

These recommendations would have an overall positive fiscal impact to the State based on the administrative penalty revenues that would be deposited to the General Revenue Fund. However, the amount of these revenues could not be estimated since administrative penalties collected by agencies vary year to year. Regarding Recommendation 1.1, LBB would be authorized, but not required, to recover any costs associated with overseeing SDSI agencies by assessing a cost reimbursement fee to be paid by the SDSI agencies. Under Recommendation 1.2, TREC would no longer pay annual retainers to SAO, OAG, and the State Office of Administrative Hearings; however, this would not have a significant fiscal impact because under the SDSI Act, TREC would reimburse these entities for the actual costs of any services rendered.

-
- ¹ Self-Directed Budget for Certain Divisions, Subchapter F, Texas Insurance Code.
 - ² H.B. 2774, 81st Texas Legislature, Regular Session, 2009 and S.B. 1000, 82nd Texas Legislature, Regular Session, 2011.
 - ³ Sunset Advisory Commission (Sunset), *Sunset Final Report with Legislative Action on Self-Directed Semi-Independent Agency Project Act* (Austin: Texas, Sunset Advisory Commission, October 2012).
 - ⁴ H.B. 1685, 83rd Texas Legislature, Regular Session, 2013.
 - ⁵ H.B. 1675, 83rd Texas Legislature, Regular Session, 2013.
 - ⁶ State Auditor's Office (SAO), *The Real Estate Commission: A Self-directed Semi-independent Agency, Report No.14-037* (Austin: State Auditor's Office, June 2014), pp. 1-2.
 - ⁷ Sunset, *Final Report with Legislative Action Self-Directed Semi-Independent Agency Project Act*, p. 43.
 - ⁸ Section 472.103, Texas Government Code.
 - ⁹ SAO, *The Real Estate Commission: A Self-directed Semi-independent Agency*, p. 18.
 - ¹⁰ Section 2101.011(b), Texas Government Code.

Sunset Staff Study of the
*Self-Directed Semi-Independent
Status of State Agencies*

————— *Report Prepared By* —————

Steven Ogle, *Project Manager*

Christian Ninaud

Janet Wood

Jennifer Jones, *Project Supervisor*

Ken Levine
Director

Sunset Advisory Commission

Location
Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail
PO Box 13066
Austin, TX 78711

Website
www.sunset.texas.gov


Email
sunset@sunset.state.tx.us

Phone
(512) 463-1300



Credit Union Department Interoffice Memorandum

TO: File

FROM: Harold E. Feeney, Commissioner 

DATE: September 8, 2014

SUBJECT: Waiver of Operating Fees – FY2015

As of the writing of this memorandum, one credit union is in the process of being liquidated. Specifically, the credit union is TexDOT-WF, Wichita Falls. In view of the fact, that the Department does not wish to needlessly deplete these assets of the liquidating credit union and given that the Department will generate sufficient revenue to cover both its direct and indirect cost, I hereby waive the Fiscal Year 2015 operating fee for this credit union as provided by Commission Rule 97.113(c).

HEF/iv



CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Daniel J. Buckley
Deputy Commissioner

July 1, 2014

Ken Levine, Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Dear Mr. Levine:

The Credit Union Department is pleased to have this opportunity to comment on the study concerning the self-directed semi-independent status of state agencies.

The operating environment for the credit unions under the Department's supervision has evolved significantly since the Department was designated as a self-directed semi-independent (SDSI) agency five years ago. The Department's SDSI status has enabled it to react quickly in its regulatory and supervisory roles to meet the growing complexity and operational changes that have taken place in the credit union industry. As a result of the flexibility provided by the Department's SDSI designation, we have been able to enhance monitoring and be better prepared to respond to economic changes; innovation in products and services; technological advances; legislative and regulatory changes; and actions by the federal and private share insurers.

The Department believes that proper funding of a regulatory agency is inextricably linked to the quality of regulation and regulatory oversight, since the adequacy of resources, both human and technical, is the *sine qua non* of its regulatory function. The current ability of the Credit Union Commission to approve and adjust the Department's budget annually has been critically important as the State and the Nation experienced the most recent economic downturn. The annual budget process has allowed the Commission to better prioritize goals and objectives as situations dictate, assure adequacy of resources for performing responsibilities, and adhere to strong standards in regard to the stewardship of public resources.

The Department is charged with overseeing an increasingly sophisticated, technologically driven industry. To do so effectively, it has to compete for personnel and resources in the same market as the credit unions it regulates. Any inability to recruit and retain qualified examination personnel is highly likely to have adverse effects on the quality of consumer protection and effectiveness of regulation in general. The flexibility afforded by the SDSI status has permitted the Department to hire and retain personnel with the requisite levels of knowledge, training, and experience to effectively carry out the specialized work of the agency. For a small agency any loss of

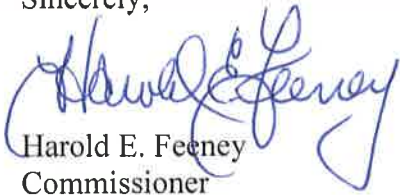
Ken Levine, Director
Sunset Advisory Commission
July 1, 2014
Page 2

staff, however, is troubling for a variety of reasons, some obvious, and some, perhaps less so. The obvious reasons are that prior to the SDSI status the Department tended, as a general rule, to be staffed by a more junior examination staff than comparable staff at credit unions. Thus, the public interest was being protected by people with less experience than those looking after private interests. In the same obvious vein, the Department was investing in the training and development of junior examiners and then losing the value of that investment at the very time that the dividends derived from the investment should be payable. Bluntly stated, high levels of attrition previously experienced by the Department were indicative of a situation where the agency made the investment, but others reaped the rewards of the investment. It is fundamentally asymmetrical, but also quite predictable when salaries are not able to reach competitive levels. In effect, prior to the SDSI status, the Department was subsidizing staff development for credit unions and others. The current tenure of the Department's examination staff has reached the highest level it has been in almost two decades.

While the flexibility afforded by the SDSI status is a critically important element of effective regulation, issues involving financial operations of SDSI agencies should generally be subjected to normal governmental oversight related to overall levels of fiscal controls and operating efficiencies. Assuring proper use of funds, appropriate accounting, prudent management of resources, sound auditing activities, and the like, are perfectly legitimate forms of governmental oversight of SDSI agencies.

Thank you for the opportunity to comment. If you have any questions about the Department's comments, please feel free to contact me.

Sincerely,



Harold E. Feeney
Commissioner

HEF/iv



SUNSET ADVISORY COMMISSION

P.O. Box 13066 ♦ Austin, Texas 78711-3066

RECEIVED
CREDIT UNION
DEPARTMENT

2014 JUN -9 PM 1:15

Senate Members

Chair
Sen. Jane Nelson
Flower Mound

Sen. Brian Birdwell
Granbury

Sen. Juan "Chuy" Hinojosa
McAllen

Sen. Dan Patrick
Houston

Sen. Charles Schwertner
Georgetown

Dawn Buckingham, M.D.
Austin

House Members

Vice Chair
Rep. Four Price
Amarillo

Rep. Cindy Burkett
Sunnyvale

Rep. Harold V. Dutton, Jr.
Houston

Rep. Larry Gonzales
Round Rock

Rep. Richard Peña Raymond
Laredo

Tom Luce
Dallas

Director

Ken Levine

June 5, 2014

Harold Feeney
Commissioner
Credit Union Department and Commission
914 East Anderson Lane
Austin, TX 78752

Dear Mr. Feeney:

The Sunset Advisory Commission is currently conducting a study concerning the self-directed semi-independent status (SDSI) of state agencies as directed by the 84th Legislature in House Bill 1675. This study is not a Sunset review of any agency's individual SDSI status; rather it is a comprehensive look at the state's approach to SDSI. The study must address the criteria and a process for determining whether to grant or revoke SDSI status of an agency; how to evaluate the performance of SDSI agencies, including oversight and reporting requirements; and appropriations issues related to an agency obtaining or losing SDSI status.

As part of this study, we would appreciate input from the agencies that currently have SDSI status, including which aspects of SDSI work best and why, anything that isn't working in practice and how it could be improved, and any thoughts on what criteria to consider in granting SDSI status. As with a normal Sunset review, comments submitted to Sunset staff are confidential.

If you would like to share your ideas about SDSI, please use the comment form on the Sunset Commission website, or contact Steven Ogle, the project manager handling this study, at 512-463-1300 or Steven.Ogle@sunset.state.tx.us. Suggestions are preferred by July 1, 2014, so they can be fully considered by the Sunset staff. The study is scheduled to be published in October 2014. We greatly appreciate your assistance and look forward to hearing your ideas.

Sincerely,

Ken Levine
Director



STATE OFFICE OF RISK MANAGEMENT
WILLIAM P. CLEMENTS, JR. BUILDING, 6TH FLOOR
P.O. BOX 13777, AUSTIN, TEXAS 78711
(512) 475-1440

June 19, 2014

Mr. Harold E. Feeney
Executive Director
Credit Union Department
914 East Anderson Lane
Austin, TX 78752-1604

Agency # 469

Re: Action Plan Response

Dear Mr. Feeney:

The State Office of Risk Management conducted an On-Site Consultation (OSC) at the Credit Union Department. The OSC was conducted on May 1, 2014 under the authority of Texas Labor Code, Title V, Subtitle A, Chapter 412 as part of your agency's overall risk management program assessment.

We received your plan of action addressing all observations and recommendations discussed in the OSC Report. Your plan is approved with the understanding that the risk management process is a continuous undertaking and that progress will be made on any uncompleted recommendations.

Thank you for your cooperation, courtesy, and assistance during the consultation. Please contact me at (512) 936-1573 or frank.marcopolos@sorm.state.tx.us if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Frank J. Marcopolos". The signature is written in a cursive style.

Frank J. Marcopolos, ARM
Risk Management Consultant
State Office of Risk Management

cc: Ms. Stacey McLarty, Risk Manager/Deputy Executive Director, Credit Union Department

D

COMMITTEE REPORT

D. COMMISSIONER EVALUATION COMMITTEE -- The Chair of the Committee will highlight the procedures for the Commissioner's FY 2014 performance review.

BACKGROUND: The Commissioner Evaluation Committee is a standing committee of the Commission. The purpose of the committee is to coordinate the annual evaluation of the commissioner's performance and oversee the development and maintenance of a commissioner's succession plan. The annual evaluation process is to be completed at the first Commission meeting of the fiscal year (October).

Committee Members

- Allyson "Missy" Morrow, Chair
- Rob Kyker
- Sherri B. Merket
- Gary Tuma
- Vik Vad
- Manuel "Manny" Cavazos, Ex-officio

RECOMMENDED ACTION: During the Executive Session, the Commission will have the opportunity to review, comment on and/or revise the evaluation prepared by the Commissioner Evaluation Committee and to formulate thoughts on the goals for 2015. Formal action on the adoption of the FY 2015 performance measures will occur in open session upon the adjournment of the Executive Session.

RECOMMENDED MOTION: I move that we maintain the Commissioner's current performance targets, evaluation form, and salary for FY 2015.



**CREDIT UNION DEPARTMENT
COMMISSIONER EVALUATION FORM
FY 2014**

Name _____

Date Employed _____ Date of Last Evaluation _____

RATING SUMMARY

To determine the Overall Rating, enter the Total Results Achievement and Skills Evaluation scores below, multiply the individual scores by the weights placed on each section as indicated, and add the results together.

I. Results Achievement

_____ x 0.75 = _____
(Total Score from Pg. 2)

II. Skills Evaluation

_____ x 0.25 = _____
(Total Score from Pg. 3)

Overall Rating (Sum of I and II) _____

GENERAL OBSERVATIONS:

RECOMMENDATIONS:

GENERAL:

SALARY:

Chair, Commissioner Evaluation Committee

Date

I. JOB RESPONSIBILITIES AND PERFORMANCE CRITERIA

For each job responsibility/performance category, assign a rating from 1 to 5 based on the performance rating definitions described at the bottom of the form. Next, multiply the rating assigned by the weight shown and enter the result in the "weight x rating" box (i.e. 25% x 5 = 1.25).

JOB RESPONSIBILITIES AND PERFORMANCE CRITERIA (Responsibility statements from the job description or established criteria)	ACHIEVEMENT	W E I G H T	R A T I N G	W E I G H T	R A T I N G
1. Examination Program	Intervals between CU Exams shall not exceed 18 months Examiner's E-time will be 60% of worktime available 85% of Exam reports will be mailed within 20 days	25%			
2. Supervision	CAMEL composition ratings Supervisory action analysis	25%			
3. Administrative Practices	Office Administration/Budget Complaints 92% of complaints will be resolved within 30 days Complaint Resolution will average 23 days or less	25%			
4. Communication	85% of CUs will indicate quality service from TCUD Legislative responsiveness for department	15%			
5. Commission Interaction	10 days before Commission meeting agenda packets will be mailed 8 periodic reports will be mailed to Commission members	10%			
I. Total Score (Sum of numbers shown in the "weight x rating" boxes. [Score must not be less than 1 nor greater than 5]. Enter this score in Results Achievement Section on page 1.)					
<p>PERFORMANCE RATINGS: The annual review will be classified in one of the following areas.</p> <p>1. UNSATISFACTORY: Employee is not performing the minimum requirements of the responsibility area in a satisfactory manner. Performance meets few or none of the key goals/standards. Improved performance is required for continuation in the position.</p> <p>2. BELOW REQUIREMENTS: Employee is not consistently performing all the requirements of the responsibility area. Performance is below expectations showing consistent weakness. Improved performance is necessary. Requires more than expected supervision.</p> <p>3. MEETS REQUIREMENTS: Employee is performing all requirements of the responsibility area. Performance is standard, although some requirements are performed above expectations and occasionally below. Performance meets most key goals/standards. Fully competent performer.</p> <p>4. EXCEEDS REQUIREMENTS: Employee is performing most requirements of the responsibility area consistently above expectations and significantly exceeds some requirements. Requires less supervision than expected.</p> <p>5. SIGNIFICANTLY EXCEEDS REQUIREMENTS: Employee is consistently performing all requirements of the responsibility area significantly above expectations. There are no weaknesses on key goals/standards. Makes significant contributions well beyond job demands.</p>					

II. SKILLS EVALUATION

For each skill, circle the performance rating (as defined on page 2) which most accurately describes the commissioner's performance.

1. **Initiative** -- The ability to execute independent action and begin working without supervision; sets own goals and direction; self-starter.
 1 2 3 4 5

2. **Technical Knowledge** -- The familiarity with and understanding of specific information related to the job. Capacity and ability to perform assigned responsibilities with current knowledge.
 1 2 3 4 5

3. **Creativity/Innovation** -- The ability to conceive and introduce original ideas, methods and programs through imaginative thinking.
 1 2 3 4 5

4. **Decisiveness/Judgment** -- Shows willingness to accept risk and act with available data. Chooses best course of action from several alternatives in timely manner. The ability to weigh relevant data and draw sound conclusions. Considers variety of factors, places them in proper perspective to reach logical conclusions based on evidence at hand.
 1 2 3 4 5

5. **Planning/Organization** -- Establishes short and long-range objectives, an appropriate course of action to accomplish them, who is to do them, and the timing for completion. Arranges work in systematic manner to promote efficiency; assigns work in proper priorities; establishes clear relationships of responsibility and priorities, and prevents duplications of effort.
 1 2 3 4 5

6. **Leadership** -- To direct or influence the operations, activities, and performance of a group. To demonstrate the capacity to inspire teamwork and motivate others to accomplish objectives. To command attention and respect and to display a genuine air of confidence.
 1 2 3 4 5

7. **Professional Image**
 1 2 3 4 5

COMMENTS

I. Total Score: _____
 (Add all circled numbers above and divide by seven. [Score must not be less than 1 nor greater than 5]. Enter this score in Skills Evaluation section on page 1.)

E

UNFINISHED BUSINESS

Seven pending items from previous meetings are being presented to the Commission for its information, consideration, and/or possible action. Specifically, the Commission will discuss and consider:

- a. The Possible Adoption of the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.
- b. The Possible Adoption of the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending.
- c. The Possible Adoption of the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50(g)).
- d. The Possible Adoption of the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests.
- e. The Chair's Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation).
- f. The Department's FY 2014 Financial Results and the FY 2015 Budget.
- g. The Financial Services Market and the Effect on Credit Unions Regulated by the Department.

RECOMMENDED ACTION: The Department requests that the Commission take action as indicated in the documents contained in **TAB E**.

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.
2. The proposed rule is presented to the commission for consideration.
3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.
4. The proposed rule is adjusted by staff (if required), furnished to legal counsel and transmitted to the *Texas Register* for publication as a "proposed" rule.
5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.
6. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.
7. The rule is adopted as "final" and transmitted to the *Texas Register* for publication as a final rule. The rule becomes effective 20 days following filing for publication.
8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

Rules, which are approved by the commission for emergency adoption, are transmitted to the *Texas Register* for filing. These rules become effective immediately upon filing unless another effective date is specified. They can be effective only for 120 days with a renewal provision for an additional 60 days -- a maximum of 180 days. "Day one" is the day of filing or the date specified as the effective date. While these emergency rules are in effect, regular rules should be initiated using the normal procedure described above. The Department rarely adopts emergency rules.

PROCEDURES FOR REQUIRED RULE REVIEW

Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. To comply with this requirement, the Commission follows the procedure below:

1. Every four years, the Commission adopts and publishes a Rule Review Plan, which establishes a date for the required review of each existing rule.
2. At least sixty days prior to a particular rule's scheduled review date, the Department publishes notice in the Newsletter reminding interested persons of the review and encouraging comments on the rules up for review.
3. Staff reviews each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule's structure as well as the specific language used is both clear and understandable.
4. If in reviewing existing rules, staff believes certain amendments may be appropriate, proposed amendments are prepared by staff and presented to the Rules Committee for review.
5. At a public meeting, the Rules Committee accepts public testimony on each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
6. The Committee's recommendation is presented to the Commission for consideration.
7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission approves the proposal for publication, it is transmitted to the *Texas Register* for publication as a "proposed" rule amendment.
9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
10. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in re-publication of the proposal.

11. The rule as amended is adopted and transmitted to the *Texas Register* for publication as a final rule. The rule becomes effective 20 days following filing for publication.
12. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

**DIRECTOR/COMMITTEE MEMBER FEES, INSURANCE,
REIMBURSABLE EXPENSES, AND OTHER
AUTHORIZED EXPENDITURES**

E. (a) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

BACKGROUND: At its June meeting, the Commission withdrew the previously proposed amendments to Rule 91.502 and approved for publication in the *Texas Register* revised amendments to this rule. No comments on the new proposed amendments were received.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the proposed changes to the rule.

RECOMMENDED MOTION: I move that the Commission adopt the proposed amendments to 7 TAC Rule 91.502 as previously published in the *Texas Register*.

<p>The Credit Union Commission (the Commission) adopts amendments to <*>91.502 concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, with no changes to the text published in the July 18, 2014 issue of the <eti>Texas Register<et> (39 TexReg 5493).

<p>The amendments clarify that meeting fees which are not excessive may be paid to directors, honorary directors, advisory directors, and committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

<p>The Commission received no comments on these proposed changes.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<p>The amendments are adopted under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>122.062, which limits the compensation a director may receive for services.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <*>122.062.

DRAFT

<*>91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

(b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors, (hereafter referred to as directors) or committee members for attending duly called meetings at which appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to annual report to membership). A credit union, however, may not pay any meeting fees to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are excessive as defined in §91.502(f).

(d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

(1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;

(2) the board of directors develops and maintains written policies and procedures regarding this matter; and

(3) the arrangement ceases immediately upon the person's leaving office.

(e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial

condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

(1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and

(2) it is in accordance with written board policies and procedures.

DRAFT

REAL ESTATE LENDING

E. (b) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.704. No written comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the proposed change to the rule.

RECOMMENDED MOTION: I move that we adopt the proposed amendments to 7 TAC Section 91.704 previously published in the *Texas Register*.

<p>The Credit Union Commission (the Commission) adopts amendments to <*>91.704 concerning Lending Powers, Real Estate Lending, with no changes to the text published in the July 4, 2014 issue of the <eti>Texas Register<et> (39 TexReg 5019). The amendments clarify maturity limits for certain real estate loans.

<p>The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

<p>The Commission received no comments on these proposed changes.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<p>The amendments are adopted under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>123.201 which authorizes lending activities for credit unions.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <*>123.201.

DRAFT

<*>91.704. Real Estate Lending.

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) Home loan means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Finance Code <*>347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.

(4) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(6) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:

(1) Title insurance;

(2) Escrow administration;

(3) Loan payoffs;

(4) Collection and foreclosure; and

(5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish its own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

(A) Unimproved land held for investment/speculation--Loan to value limit 60%

(B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%

(C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%

(D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%

(E) Other residential real estate such as a second or vacation home--Loan to value limit 90%

(F) Home equity--Loan to value limit 80%

(G) All Other--Loan to value limit 80%

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the outstanding balances, plus any unfunded commitment or line of credit from all sources on an item of collateral, divided by the market value of the collateral used to secure the loan.

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, credit unions engaged in real estate lending are expected to have loan policies that establish prudent standards for loan structure including tenor and amortization that are within the risk parameters approved by the board of directors and consistent with the following regulatory limits:

(1) Improved residential real estate loans (principal residence, first lien)--40 years

(2) Improved residential real estate loans (secondary residence, first lien)--30 years

(3) Improved residential real estate loans (investment property, first lien)--20 years

(4) Interim construction loans--18 months

(5) Manufactured home (first lien)--20 years

(6) Home equity loans--20 years (second lien)--30 years (first lien)

(7) Home improvement loans--20 years

(8) A loan secured in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government or any agency of the Federal Government, may be made for the maturity specified in the law, regulations or program under which the insurance, guarantee or commitment is provided

(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan." "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

(f) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories:

- (1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.
- (2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
- (3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
- (4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.
- (5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.
- (6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.
- (g) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.
- (h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

HOME EQUITY LENDING

E. (c) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50g).

BACKGROUND: At its June meeting, the Commission and the Finance Commission jointly approved the proposed amendments to 7 TAC Sections 153.1, 153.5, 153.15 and 153.1 for publication in the *Texas Register*. One comment on the proposed amendments was received. Staff is not recommending any changes in response to that comment.

RECOMMENDED ACTION: The Department recommends that the Commission vote to adopt 7 TAC Sections 153.1, 153.5, 153.15, and 153.51, as published in the *Texas Register*.

RECOMMENDED MOTION: I move subject to the adoption of the same proposed amendments by the Finance Commission that the Commission adopt 7 TAC Sections 153.1, 153.5, 153.15, and 153.51, as published in the *Texas Register*.

Isabel Velasquez

From: Robert R. Wisner [REDACTED]
Sent: Friday, July 04, 2014 11:45 AM
To: Laurie Hobbs
Cc: sealy.hutchings@occc.state.tx.us
Subject: Home Equity Lending
Attachments: Home Equity Proposed Rules.pdf

Laurie: I have three comments on the proposed rules published in today's (July 4, 2014) Texas Register, 39 Tex. Reg. 5021, regarding Home Equity Loans, 7 TAC Chapter 153.

First, in Section 153.5(3)(B), regarding legitimate discount points, the second sentence reads "Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, or service the loan." The underlined language is troublesome and, as I read it, makes it impossible for a lender to ever charge a legitimate discount point. If a lender is charging a discount point, then it is a charge that the lender is making and collecting at closing in order to "originate" the loan, the lender would not make the loan under the reduced interest rate, if the borrower did not pay the discount point. So every borrower who pays a discount point could argue that the payment of the discount point was "necessary to originate... the loan" and they would be correct, or at least create a fact question.

In other words, the rule as written, suggests that a lender could never safely charge a discount point because there would always be a fact question as to whether the discount point was necessary to originate the loan, even if the lender otherwise complied with the rule. Frankly, the underlined language adds nothing to the rule, other than to effectively eliminate it. I would strongly urge the Commissions to remove the underlined language. The remaining language adequately insures that the discount point is a legitimate fee charged for a reduced interest rate.

Second, with respect to Section 153.15(2), the choices given require either (1) that the POA itself indicate where it was executed or include a notary's statement to that effect; or (2) that a person who was physically present when the POA was executed give an Affidavit. The problem may be that an elderly person may have executed a POA at an attorney's office (or otherwise authorized location), but the only people present, other than the elderly owner, were the attorney and the attorney's notary, and the attorney and his notary are either deceased, retired and otherwise cannot be located. If the elderly person is disabled and unable to execute an Affidavit, then the POA could not be used, even though it was clear that the POA was, in fact, executed at an attorney's office.

It would seem that anyone with personal knowledge of where the POA was executed should be authorized to execute an Affidavit. For example, *Texas Estates Code* Section 751.055, provides that the agent with personal knowledge may execute an affidavit as to certain facts. If the agent knows that the principal executed the POA at an attorney's office and has personal knowledge that it was executed there (for example, they drove their father to the attorney's office, but was not in the room when it was executed), then why shouldn't a person with personal knowledge of the facts also be permitted (and expressly authorized by the rule) to give an affidavit as to that fact?

I would suggest that Section 153.15(2)(B) be revised as follows: "(B) an affidavit or written certification of a person who was present when the power of attorney was executed or of a person with personal (or actual) knowledge of where the power of attorney was executed, acknowledging that date and place at which the power of attorney was executed; or"

Third, not to make more work for you, but if you are making changes to Section 153.15 regarding the place of closing for a home equity loan, then you should also address the very same rule in *Texas Constitution* Art XVI, Section 50(a)(5)(D) and 7 TAC Section 152.15, which address the place of closing for a lien for repairs and renovations to existing improvements to a homestead, since a POA could also be used to close these loans and presumably would (or should) be subject to the same requirements.

That's all I have for now. As always, if you or anyone in your office has any questions or comments. Please let me know. Thank you, Rob

Robert R. Wisner | *Shareholder*

Crain, Caton & James | *Attorneys & Counselors* | *Since 1912*

Five Houston Center | 1401 McKinney St., Suite 1700 | Houston, TX 77010

Direct: 713.752.8607 | Fax: 713.658.1921

rwisner@craincaton.com | www.craincaton.com | [Bio](#) | [LinkedIn](#) | [vCard](#)

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Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending
§§153.1, 153.5, 153.15, & 153.51

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to the following home equity lending interpretations: §§153.1, concerning Definitions, 153.5, concerning Three percent fee limitation, 153.15, concerning Location of Closing, and 153.51, concerning Consumer Disclosure.

The commissions adopt the amendments without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5021).

The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") received one written comment on the proposal from an individual. The comment includes three suggested revisions to the proposed amendments. The commenter's individual suggestions are discussed following the purpose of each provision discussed in the comment.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

The main purpose of the amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In

Norwood, the court held that portions of three interpretations adopted by the commissions were invalid: §§153.1, 153.5, and 153.15.

In 1997, the Texas Constitution was amended to authorize home equity loans. After further amendments in 2003, the commissions were authorized to adopt interpretations of the constitution's home equity provisions, subject to the requirements of the Texas Administrative Procedure Act. The commissions adopted their interpretations in 2004. A group of homeowners sued the commissions, challenging several of the adopted interpretations. The case was ultimately appealed to the Texas Supreme Court and resulted in the court's decision in *Finance Commission of Texas v. Norwood*.

In *Norwood*, the court invalidated certain provisions interpreting Section 50(a)(6)(E), which provides that a home equity loan may not "require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit." The court invalidated §153.1(11) of the commissions' interpretations, which defined "interest" for purposes of the three percent limitation as "interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts." The court held that interest means "the amount determined by multiplying the loan principal by the interest rate." 418

S.W.3d at 588. The court also invalidated paragraphs (3), (4), (6), (8), (9), and (12) of §153.5, which applied the commissions' original definition of "interest" to several specific types of charges for purposes of the three percent limitation. In a supplemental opinion, the court explained that interest includes per diem interest and legitimate discount points, and that these amounts are not included in the three percent limitation. 418 S.W.3d at 596.

The court also invalidated provisions interpreting Section 50(a)(6)(N), which provides that a home equity loan must be "closed only at the office of the lender, an attorney at law, or a title company." The court invalidated §153.15(2), which allowed a lender to accept a properly executed power of attorney authorizing someone to close a loan on a homeowner's behalf. It also invalidated §153.15(3), which allowed a lender to accept the homeowner's consent by mail. In the supplemental opinion, the court explained that "a power of attorney must be part of the closing to show the attorney-in-fact's authority to act." 418 S.W.3d at 596.

As stated earlier, the main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*. The individual purposes of each amendment are provided below.

The amendment to the second sentence of §153.1 replaces the word "section" with "chapter" in order to clarify that the definitions listed in §153.1 apply to all of Chapter 153.

The amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court. The phrase "over a period of time" is included in the

amendment in order to clarify the time component in the definition. In addition, in its supplemental opinion, the court used the phrase "over a period of time" in applying the general definition of "interest." 418 S.W.3d at 596.

The amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation, in accordance with the court's supplemental opinion. *See* 418 S.W.3d at 596.

The amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation, in accordance with the court's supplemental opinion. *See* 418 S.W.3d at 596. The amendment also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, stating that the discount points cannot be "necessary to originate, evaluate, maintain, record, or service the loan." The amendment provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate.

The commenter's first suggestion is that the commissions remove the phrase "and are not necessary to originate, evaluate, maintain, record, or service the loan" from §153.5(3)(B). The commenter states: "If a lender is charging a discount point, then it is a charge that the lender is making and collecting at closing in order to 'originate' the loan, the lender would not make the loan under the reduced interest rate, if the borrower did not pay the discount point. So every borrower who pays a discount point could argue that the payment of the discount point was 'necessary to originate . . . the

loan' and they would be correct, or at least create a fact question."

The commissions disagree with this suggestion. In order for discount points to be legitimate, the borrower must be able to choose between a loan without discount points and a loan that includes discount points with a corresponding reduced interest rate. If the borrower can make this choice, then the discount points are not "necessary to originate, evaluate, maintain, record, or service the loan," because the borrower has the option of obtaining a loan without them. The court made this point in its supplemental opinion to *Norwood* when it stated: "We also agree with the Homeowners that true discount points are not fees 'necessary to originate, evaluate, maintain, record, insure, or service' but are an option available to the borrower and thus not subject to the 3% cap." 418 S.W.3d at 596. In other words, whether discount points are legitimate depends partly on whether they are truly an option available to the borrower. The commissions disagree with the commenter's suggestion and believe that the proposed text is appropriate to maintain for this adoption.

The amendments to paragraphs (4), (6), (8), (9), and (12) of §153.5 add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation. Paragraphs (9) and (12), regarding charges to maintain and service the loan, are also amended to provide clarity and delete redundant text.

The amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title

company. It also provides that a lender may rely on an established system to evidence the date and place at which a power of attorney was signed. The amendment permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

The commenter's second suggestion is that the commissions amend the provision in §153.12(2)(B) allowing a lender to evidence compliance with the requirements for powers of attorney. As proposed, the provision allows a lender to evidence compliance through "an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed." The commenter suggests that the commissions add the phrase "or of a person with personal (or actual) knowledge of where the power of attorney was executed," in order to allow certifications by persons who were not present but who possess personal or actual knowledge. The commenter states: "It would seem that anyone with personal knowledge of where the POA was executed should be authorized to execute an Affidavit. For example, Texas Estates Code Section 751.055, provides that the agent with personal knowledge may execute an affidavit as to certain facts. If the agent knows that the principal executed the POA at an attorney's office and has personal knowledge that it was executed there (for example, they drove their father to the attorney's office, but was not in the room when it was executed), then why shouldn't a person with personal knowledge of the facts also be permitted (and expressly authorized by the rule) to give an affidavit as to that fact?"

The commissions disagree with this suggestion. The commenter suggests that a person can have personal knowledge that the power of attorney was signed at a particular place and time, even though the person was not present when it was signed. It is unclear how a person can have personal knowledge in this situation. In the commenter's example, where the child drops the parent off at the attorney's office, it appears that the child's affidavit would be based on a hearsay allegation that the parent signed the power of attorney inside the office. An affidavit not based on personal knowledge is generally insufficient to support a claim. *Marks v. St. Luke's Episcopal Hosp.*, 319 S.W.3d 658, 666 (Tex. 2010). An affidavit based on hearsay is insufficient. *Stanford v. Johnson*, 577 S.W.2d 791, 793 (Tex. Civ. App.--Corpus Christi 1979, no writ). Also, Texas Estates Code, §751.055 does not support the type of affidavit suggested by the commenter. That section deals with an affidavit signed by an attorney-in-fact, stating that the attorney-in-fact did not have knowledge about the termination of a power of attorney at the time it was terminated or revoked. This matter is within the personal knowledge of the attorney-in-fact.

The commissions disagree with the suggestion that a person can have personal knowledge of the time and place that a power of attorney was signed without being present. The commissions believe that it is appropriate to maintain the proposed text, which allows a certification by a person who was present. This does not mean that §153.12(2) provides the only methods through which a lender can evidence compliance. The provision is not intended to provide a comprehensive list of all methods by which a lender may evidence compliance. This is why the section uses the phrase "may include one or more of the

following." It would be outside the intended scope of the amendments to provide a comprehensive statement of the circumstances in which a lender can (or should) use powers of attorney, or a statement of the conditions that must be satisfied in every power of attorney relating to a home equity loan.

The amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. The amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

In §153.51, new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

The commenter's third suggestion is that the commissions make conforming changes to §152.15, regarding Place for Execution of Contract for Work and Material. The commenter suggests that this change would be appropriate because "a POA could also be used to close these loans and presumably would (or should) be subject to the same requirements."

The commissions decline to adopt this suggestion. This suggestion is outside the intended scope of the amendments, which are intended to address home equity loans, rather than work and material loans. Work and material loans were not addressed in *Norwood*. In addition, because §152.15 is outside the subject matter included in the proposal, adopting this change would require a separate rulemaking action with a new publication for comment. *See State Bd.*

of *Ins. v. Deffebach*, 631 S.W.2d 794, 801 (Tex. App.--Austin 1982, writ ref'd n.r.e.).

The amendments are adopted under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the adopted amendments are contained in Article XVI, Section 50 of the Texas Constitution.

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter [section], unless the context indicates otherwise:

(1) - (10) (No change.)

(11) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time. [Interest--interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.]

(12) - (15) (No change.)

§153.5. Three percent fee limitation: Section 50(a)(6)(E)

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate,

maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) [the law, for example per diem interest and points,] are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to

pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse [~~at the inception of an equity loan~~] to maintain an equity [the] loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse [~~at the inception of an equity loan~~] for a party to service an equity [the] loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid

at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(13) - (16) (No change.)

§153.15. Location of Closing: Section 50(a)(6)(N)

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) (No change.)

(2) Any [~~A lender may accept a properly executed~~] power of attorney allowing an [the] attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present

when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The [A lender may receive] consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company [by mail or other delivery of the party's signature to an authorized physical location and not the homestead].

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) - (4) (No change.)

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

The agencies hereby certify that the adoption has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on October 17, 2014.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

Part VIII. Joint Interpretations

Chapter 153. Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

- (1) Balloon – an installment that is more than an amount equal to twice the average of all installments scheduled before that installment.
- (2) Business Day – All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.
- (3) Closed or closing – the date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.
- (4) Consumer Disclosure – The written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.
- (5) Cross-default provision – a provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.
- (6) Date the extension of credit is made – the date on which the closing of the equity loan occurs.
- (7) Equity loan – An extension of credit as defined and authorized under the provisions of Section 50(a)(6).
- (8) Equity loan agreement – the documents evidencing the agreement between the parties of an equity loan.
- (9) Fair Market Value – the fair market value of the homestead as determined on the date that the loan is closed.
- (10) Force-placed insurance – insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.
- (11) Interest – As used in Section 50(a)(6)(E), “interest” means the amount determined by multiplying the loan principal by the interest rate over a period of time.
- (12) Lockout provision – a provision in a loan agreement that prohibits a borrower from paying the loan early.
- (13) Owner – A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.
- (14) Preclosing Disclosure – The written itemized disclosure required by Section 50(a)(6)(M)(ii).
- (15) Three percent limitation – the limitation on fees in Section 50(a)(6)(E).

§153.5. Three percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) **Optional Charges.** Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the three percent fee limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the three percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the three percent limitation.

(2) **Optional Insurance.** Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the three percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) **Charges that are Interest.** Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) **Charges that are not Interest.** Charges an owner or an owner's spouse is required to pay that are not interest under §153.1 (11) of this title are fees subject to the three percent limitation.

(5) **Charges Absorbed by Lender.** Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation.

(6) **Charges to Originate.** Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(7) **Charges Paid to Third Parties.** Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating a loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(8) **Charges to Evaluate.** Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the three percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the three percent limitation. Examples of these charges include title insurance and mortgage insurance protection.

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.11(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Chapter 342 of the Texas Finance Code may charge only those fees permitted in TEX. FIN. CODE, §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Chapter 342 of the Texas Finance Code and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Chapter 342 of the Texas Finance Code.

(14) Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the three percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(15) Subsequent Events. The three percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the three percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(16) Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the three percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead.

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company.

DRAFT

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(4) A lender whose discussions with the borrower are conducted primarily in Spanish for a close-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

DRAFT

CALL REPORTS AND OTHER INFORMATION REQUESTS

E. (d) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.209. No written comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the proposed change to the rule.

RECOMMENDED MOTION: I move that we adopt the proposed amendments to 7 TAC Section 91.209 as previously published in the *Texas Register*.

<p>The Credit Union Commission (the Commission) adopts amendments to <*>91.209 concerning Call Reports and Other Information Requests, with no changes to the text published in the July 4, 2014 issue of the <eti>Texas Register<et> (39 TexReg 5018).

<p>The amendments increase the Commissioner's flexibility to assess penalties when a credit union fails to file a timely and accurate quarterly financial and statistical report. Such penalties are intended as a deterrent to late, incomplete, and inaccurate filing of required reports.

<p>The Commission received no comments on these proposed changes.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<p>The amendments are adopted under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>122.101, which directs credit unions to submit call reports to the Commissioner and permits the Commissioner to charge a fee for late reports, and <*>122.254 which sets out criminal penalties for providing false information.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <*>122.101 and <*>122.254.

DRAFT

<*>91.209. Call Reports and Other Information Requests.

(a) Each credit union shall file a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty \$50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to negate the credit union being assessed a civil money penalty under Section 202 of the Federal Credit Union Act (12 U.S.C. § 1782) for late or false/misleading filing of a quarterly call report (Form 5300). This penalty shall be abated in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, however, shall not be decreased below the amount authorized to be levied under subsection (a).

COMMITTEE APPOINTMENTS

E. (e) Discussion of the Chair's Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation).

BACKGROUND: As required by Commission Policy, the Chair must appoint members to those committees established by the Commission. Currently, the Commission has two standing committees:

1. Commissioner Evaluation Committee

- **Members.** The Commission Chair shall appoint a Commissioner Evaluation Committee of at least three members, and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.
- **Purpose.** The purpose of the Committee shall be to coordinate the annual evaluation of the Commissioner's performance and to oversee the development and maintenance of a Commissioner succession plan.

2. Rules Committee

- **Members.** The Commission Chair shall appoint a Rules Committee of at least three members, and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.
- **Purpose.** The purpose of the Committee is to conduct thorough deliberations and scrutiny of proposed rulemaking and assigned projects, and to bring to the Commission the results of its deliberations and its recommendation for Commission action.

The Chair will announce his appointments to the two committees at the meeting.

FY 2014 FINANCIAL RESULTS AND FY 2015 BUDGET

E. (f) Discussion and Consideration of the Department's FY 2014 Financial Results and the FY 2015 Budget.

BACKGROUND: As a self-directed, semi-independent (SDSI) agency, the Commission has the responsibility for reviewing and approving the Department's budget, including any adjustments that may become necessary or appropriate. Preliminary financial statements for FY 2014 follow. Financial statements for the first month of FY 2015 will be distributed at the meeting. No amendments or other adjustments are being proposed, at this time for the FY 2015 budget.

Preliminary numbers for the fiscal year ending August 31, 2014, reflect total income of \$2,851,571, which was \$15,842 more than the budget revenue projections. In accordance with Commission policy, the revenues collected are \$188,657 less than budgeted expenses as the result of the funds in excess of the prescribed Contingency Fund Reserve aggregate limit, as of August 31, 2013, being used to reduce the operating fees collected from credit unions during the fiscal year.

During FY 2014, approximately \$3,009,296 was spent operating the Department, which is approximately 99% (\$15,090) of budget.

RECOMMENDED ACTION: No formal action is anticipated.

Credit Union Department
 Operating Statement & Budget Analysis
 For the Period Ended 08/31/14 month 13

	FY 2014 Budget	FY 2014 YTD Budgeted Revenues	FY 2014 YTD Actual Revenues	Over (Under) Budget	Percent of Budget
REVENUES:					
Operating Income					
Operating Fees	\$2,835,729	\$2,824,729	\$2,822,024	(\$2,705)	100%
Out-of-State Branch Fees	\$0	\$11,000	\$11,000	\$0	
Examination Fees			\$2,950	\$2,950	
Application Fees			\$200	\$200	
Penalties		\$0	\$12,867	\$12,867	
Other			\$0	\$0	
Operating Income Subtotal		\$2,835,729	\$2,849,041	\$13,312	
Interest Income					
Interest Trust			\$442	\$442	
Interest USAS			\$0	\$0	
Interest Income Subtotal		\$0	\$442	\$442	
Refunds					
(vendors)			\$2,088	\$2,088	
Refunds Subtotal		\$0	\$2,088	\$2,088	
TOTAL REVENUES	\$2,835,729	\$2,835,729	\$2,851,571	\$15,842	100%
Excess Reserves <i>utilized to reduce operating fees</i>	\$188,657	\$188,657	\$188,657	\$0	
GRAND TOTAL	\$3,024,386	\$3,024,386	\$3,040,228	\$15,842	

Credit Union Department
 Operating Statement & Budget Analysis
 For the Period Ended 08/31/14 month 13

	FY 2014 Budget	FY 2014 YTD Budget	FY 2014 YTD Actual	(Over)Under Budget	Percent of Budget
EXPENDITURES:					
Personnel Expenses:					
Salaries and Wages	\$1,835,620	\$1,835,620	\$1,794,177	\$41,443	98%
Overnight Stipends	\$0	\$0	\$20,660	(\$20,660)	n/a
Employee Benefits	\$501,227	\$501,227	\$542,154	(\$40,927)	108%
Other (longevity, lump sum)	\$37,140	\$37,140	\$39,080	(\$1,940)	105%
Total Personnel Expenses	\$2,373,987	\$2,373,987	\$2,396,071	(\$22,084)	101%
Travel Expenses:					
In State	\$328,020	\$328,020	\$321,944	\$6,076	98%
Out-of-State	\$5,000	\$5,000	\$2,032	\$2,968	41%
Commission	\$11,000	\$11,000	\$6,297	\$4,703	57%
Total Travel Expenses	\$344,020	\$344,020	\$330,272	\$13,748	96%
Other Operating Expenses:					
Communication/Utilities	\$27,380	\$27,380	\$39,682	(\$12,302)	145%
Professional Services/Fees	\$54,800	\$54,800	\$46,689	\$8,111	85%
Supplies/Materials	\$15,910	\$15,910	\$17,101	(\$1,191)	107%
Training/Registration	\$13,680	\$13,680	\$2,661	\$11,019	19%
Repairs/Maintenance	\$43,670	\$43,670	\$44,824	(\$1,154)	103%
Rentals and Leases	\$4,761	\$4,761	\$6,239	(\$1,478)	131%
Computers	\$23,600	\$23,600	\$46,314	(\$22,714)	196%
Other Operating	\$26,988	\$26,988	\$66,741	(\$39,753)	247%
State of Texas Services	\$80,500	\$80,500	\$12,701	\$67,799	16%
Capital Expenditures	\$0	\$0	\$0	\$0	100%
Restricted (parking lot)	\$15,090	\$0	\$0	\$0	100%
Total Other Operating Expenses	\$306,379	\$291,289	\$282,953	\$8,336	97%
TOTAL EXPENDITURES	\$3,024,386	\$3,009,296	\$3,009,296	(\$0)	100%
EXCESS REVENUES	(\$0)	\$15,090	\$30,931	\$15,842	

FINANCIAL SERVICES MARKET AND CREDIT UNIONS
REGULATED BY THE DEPARTMENT

E. (g) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department.

BACKGROUND: The operating environment for Texas credit unions remains somewhat difficult as a result of the Great Recession and subsequent prolonged economic recovery. Credit unions have specifically been impacted by the combination of historically low interest rates, above-average unemployment, and weak demand for loan products. Boards and management are working very hard to capture the financial business of their members. The costs associated with advancing technology and achieving and maintaining regulatory compliance are also creating challenges for credit unions. These costs are rarely recoverable, so efficient operations are becoming even more critical.

INDUSTRY STATUS: At June 30, 2014, there were **188** state-chartered credit unions in Texas. Assets in these credit unions totaled **\$31.714 billion**, which is an increase of **\$2.368 billion** since June 30, 2013, for an annualized growth rate of **7.52%**. The average net worth ratio increased to **9.82%** from **9.63%** at June 30, 2013.

Loans for Texas chartered credit unions totaled **\$20.679 billion** as of June 30, 2014. This is an increase of **\$955 million**, or **4.8%**, since December 31, 2013. Loans have grown by **\$2.307 million** since June 30, 2013 for an annualized growth rate of **12.56%**.

Shares for Texas chartered credit unions totaled **\$27.691 billion** as of June 30, 2014. This is an increase of **\$996 million**, or **3.73%** since December 31, 2013.

Texas chartered credit union average loan delinquency ratio was **0.62%** as of June 30, 2014, compared to a ratio of **0.80%** as of December 31, 2013.

At June 30, 2014, **36** state-chartered credit union reported net operating losses, compared to **37** at June 30, 2013. These **36** credit union reported aggregate negative net earnings of **\$4.44 million**. The remaining **152** credit union reported aggregate net income **\$125.91 million**.

PROBLEM INSTITUTIONS: 30 credit unions were assigned a CAMEL rating of 3 or higher. Each credit union in this category is monitored through regular on-site contacts and review of compliance with issued and outstanding documents of resolution and other supervisory agreements or orders.

ENFORCEMENT ISSUES: The Department has the following administrative sanctions outstanding:

Dividend Restrictions	0
LUAs	2
Determination Letters	4
Conservatorships	1
Cease and Desist	1

Chartering Activity

New Charter	0
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RECOMMENDED ACTION: No formal action is anticipated.

RATIO ANALYSIS

June 2014/June 2013

	June 30, 2014	June 30, 2013	Difference
# of Credit Unions	188	191	-3
Total Assets	\$31.715 B	\$29.550 B	\$2.165 B
Average Assets/CU	6.82 M	6.41 M	0.41 K
Net Worth/Total Assets	9.82	9.58	+0.24
Net Worth Growth	\$8.43 M	\$10.93 M	-\$2.5 M
Return on Average Assets	0.78	0.89	-0.11
Net Interest Margin/ Average Assets	3.14	3.12	+0.02
Fee & Other Income/Average Assets	1.66	1.64	+0.02
Operating Expense/Average Assets	3.68	3.66	+0.02
Provision for Loan Loss/Average Assets	0.36	0.27	+0.09
% of Negative Earnings Credit Unions	19.1	15.7	+3.4
Loans/Shares	74.68	70.82	+3.86
Delinquent Loans/Total Loans	0.62	0.62	-
Net Charge-Offs/Average Loans	0.57	0.57	-
Share Growth	\$7.47 M	\$9.68 M	\$2.21 M
Loan Growth	\$9.68 M	\$8.07 M	\$1.61 M
Asset Growth	\$8.01 M	\$8.58 M	-\$0.57 K
Membership Growth	2.50	2.73	-0.23

NEW BUSINESS

Three new items are being presented to the Commission for its consideration and possible formal action. Specifically, the Commission will have:

- (a) Discussion, Consideration, and Possible Vote to Readopt 7 TAC Part 6, Chapter 95 (Relating to Insurance Requirements) in its entirety.
- (b) Discussion, Consideration, and Possible Vote to Readopt the Department's Equal Employment and Workforce Diversity Plan.
- (c) Discussion of the On-Line Tools being used by the Department to Solicit Feedback from Credit Unions and Other Interested Persons.

RECOMMENDED ACTION: The Department requests that the Commission take action as indicated on the documents contained in **TAB F**.

MANDATORY RULE REVIEW – CHAPTER 95

F. (a) Discussion, Consideration, and Possible Vote to Readopt 7 TAC Part 6, Chapter 95 Relating to Insurance Requirements in its Entirety.

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for re adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan, which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff reviewed **7 TAC Part 6, Chapter 95** in its entirety and has recommended that no changes be made at this time.

Notice of review and a request for comments on these rules were published in the July 25, 2014 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rule continue to exist.

RECOMMENDED ACTION: The Department recommends that Chapter 95 be readopted without change.

RECOMMENDED MOTION: I move that the Commission find that the reasons for adopting **7 TAC Part 6, Chapter 95** continue to exist and that these rules be readopted without change.

<p>The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, <*>95.100 (Definitions), 91.101 (Share and Depositor Insurance Protection), 95.102 (Qualifications for an Insuring Organization), 95.103 (General Powers and Duties of an Insuring Organization), 95.104 (Notices), 95.105 (Reporting), 95.106 (Amount of Insurance Protection), 95.107 (Sharing Confidential Information), 95.108 (Examinations), 95.109 (Fees and Charges), 95.110 (Enforcement; Penalty; and Appeal), 95.200 (Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights), 95.205 (State Not Liable for Any Deficiency), 95.300 (Share and Deposit Guaranty Credit Union), 95.301 (Authority for a Guaranty Credit Union), 95.302 (Powers), 95.303 (Subordination of Right, Title, or Interest), 95.304 (Accounting for Membership Investment Shares), 95.305 (Audited Financial Statements; Accounting Procedures; Reports), 95.310 (Fees and Charges), and 95.400 (Requirements of Participating Credit Unions) as published in the July 25, 2014 issue of the <eti>Texas Register<et> (39 TexReg 5801). The Commission proposes to readopt these rules.

<p>The rules were reviewed as a result of the Credit Union Department (Department)'s general rule review.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

<p>The Commission received one comment in support of readoption these rules without changes. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting <*> 95.100, 91.101, 95.102, 95.103, 95.104, 95.105, 95.106, 95.107, 95.108, 95.109, 95.110, 95.200, 95.205, 95.300, 95.301, 95.302, 95.303, 95.304, 95.305, 95.310 and 95.400 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, <*> 2001.039.

CHAPTER 95

Subchapter A. Insurance Requirements

§95.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) “Act” means the Texas Credit Union Act (Texas Finance Code, Subtitle D).
- (2) “Deposit” means a balance held by a credit union and established by a credit union member, another credit union, a governmental unit, or an authorized nonmember in accordance with standards specified by the credit union, including balances designated as deposits, deposit certificates, checking accounts or accounts by other names. A “deposit” is a debt which earns interest and is owed by the credit union to the account holder.
- (3) “Federally-insured” means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF) under Title II of the Federal Credit Union Act (12 USC Section 1781 et. seq.), or its successor.
- (4) “Insuring organization” means a cooperative share insurance fund or a guaranty corporation or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions will be protected or guaranteed against loss up to a specified level for each account.
- (5) “Membership share” means a share of the credit union which shall be the balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. In the case of a joint account, the account may serve to represent the membership of each of the joint owners who have applied for and were accepted as members, as long as a full membership share for each joint owner seeking membership is maintained in the account.
- (6) “Participating credit union” means a credit union that has applied for and been admitted to participate in an insuring organization’s program and whose participation has not been terminated.
- (7) “Shares” means a balance held by a credit union and established in accordance with standards specified by the credit union including, but not limited to shares, share accounts, share certificates, share draft accounts or other such accounts. “Shares” may include membership shares. In addition, “shares” earn dividends.

§95.101. Share and Depositor Insurance Protection.

- (a) Each credit union incorporated under the Act or otherwise authorized to do business in this state shall obtain share and deposit insurance for the protection of its members’ accounts. Such share and deposit guarantee insurance may be obtained from the NCUA through the NCUSIF or from an insuring organization approved by the commissioner, with the advice and consent of the commission.
- (b) Any credit union that fails to maintain in full force and effect share and deposit insurance protections as provided in this section shall cease accepting deposits and making loans

RECEIVED
CREDIT UNION
DEPARTMENT

2014 AUG 29 PM 12:15



August 28, 2014

Mr. Harold E. Feeney, Commissioner
Credit Union Department
State of Texas
914 East Anderson Lane
Austin, Texas 78752-1699

Re: TRD-201403167 – Proposed Rule Review

Dear Commissioner Feeney:

American Mutual Share Insurance Corporation (“ASI”) appreciates the opportunity to comment on the Texas Credit Union Department’s (“TCUD”) request for public comments on the existing rules governing private share insurance and private share insurers as required by §2001.039 of the Government Code. The sections of the Texas Administrative Code being considered for re-adoption, revisions or repeal under Title 7, Part 6, Chapter 95, Subchapter A of the Texas Administrative Code include: §§95.100 through 95.110, inclusive, §95.200, §95.205, §§95.300 through 95.305, inclusive, §95.310 and §95.400.

As a party directly affected by such rules ASI has a strong interest in their content, purpose and appropriateness given current economic and business conditions. TCUD is not proposing any changes to such rules. Private share insurance and private share insurers have responsibly operated under such rules since their original adoption; therefore, we support continuation of the present rules governing private insurance.

Thank you for the opportunity to comment on the TCUD’s request for public comment on the subject rules.

Respectfully submitted,

A handwritten signature in blue ink that reads 'Dennis R. Adams'. The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

DENNIS R. ADAMS
President and CEO

DRA/jrd

immediately and shall terminate its corporate existence in this state under such terms and conditions as the commissioner deems appropriate.

§95.102. Qualifications for an Insuring Organization.

(a) An insuring organization must, at a minimum, demonstrate the following prerequisites and must continue to meet these standards on an ongoing basis, in order to do business in this state:

(1) The insuring organization is authorized to provide share and deposit insurance protection in its state of domicile or in the State of Texas;

(2) The insuring organization is in good standing with the regulatory authorities in its state of domicile;

(3) The insuring organization receives regular examinations from its state of domicile;

(4) The insuring organization has capital which is adequate for its prospective business; and

(5) The insuring organization has loss reserves that are actuarially sound.

(b) In addition to the prerequisites delineated above, the department may scrutinize other data and information as the commissioner deems appropriate, including, but not limited to, demonstrated expertise in insuring credit union shares and deposits.

(c) The department shall have the right to examine the books and records of the insuring organization as part of the approval process. The insuring organization shall be assessed the supplemental examination fee as prescribed in <*>97.113 of this title (relating to Fees and Charges). The insuring organization shall pay the fee to the department within thirty days of the assessment.

(d) The department may, in approving an insuring organization, impose such written conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

(e) If an approved insuring organization subsequently fails to meet any of the prerequisite standards or written conditions imposed by the department, the commissioner, in the exercise of discretion, may provide a reasonable period of time for the insuring organization to take corrective actions to bring its operations back into compliance. During this period of corrective action, however, an insuring organization may not contract with any additional credit unions to provide share and deposit insurance protection.

§95.103. General Powers and Duties of an Insuring Organization.

In carrying out its general purposes, an insuring organization may:

(1) guarantee to participating credit unions the payment of any deficiency in an individual member's share or deposit account(s) caused by credit union's insolvency or any other reason;

(2) issue share and deposit insurance contracts or otherwise effect credit union share guaranty, and enter into other contracts necessary or advisable in the conduct of its business;

(3) advance funds in accordance with agreed upon lending terms and conditions to aid participating credit unions to operate and to meet liquidity needs;

(4) upon the written order of the commissioner, and at such compensation as shall be agreed upon, the insuring organization may assume control of the property and business of any participating credit union and operate it at the direction of the commissioner until its financial

stability has been reestablished to the satisfaction of the commissioner, or the credit union has been liquidated or merged into another credit union;

- (5) assist in the merger, consolidation, or liquidation of participating credit unions;
- (6) receive money or other property from participating credit unions;
- (7) conduct investigation and audits of any applicant or participating credit union in order to determine the financial and operating condition of the applicant or participating credit union; and
- (8) establish conditions for participation by credit unions, including the establishment of risk eligibility standards.

§95.104. Notices.

(a) An insuring organization shall provide written notice to the department of receipt of any application for participation by a credit union. Within 30 days of receipt of the notice, the department will advise the applicant and the insuring organization if it will interpose an objection to the proposal based on safety and soundness concerns. Any such objection must be addressed to the satisfaction of the department before the applicant will be eligible to participate in the insuring organization's program. The insuring organization shall also be responsible for notifying the department of its underwriting decision on any application and advising the department when an applicant has become a participating credit union.

(b) At least 30-days prior to the effective date of any termination, an insuring organization shall notify the department in writing of any termination, voluntary or involuntary, of a participating credit union.

§95.105. Reporting.

(a) Within one hundred days after the close of a fiscal year, an insuring organization shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering that fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant. In addition, at least once every three years, the audit shall include an actuarial study of the capital adequacy of the insuring organization.

(b) The provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

§95.106. Amount of Insurance Protection.

(a) The primary insured or guaranteed amount for share and deposit accounts of individual members of participating credit unions shall never be less than the corresponding share insurance coverage provided by the NCUSIF or its successor.

(b) With the approval of the commissioner and if authorized by the insuring organization, a participating credit union may, from time to time as determined by its board of directors, issue membership shares that are not guaranteed and are subordinate to all other claims, including creditors, shareholders and the insuring organization.

§95.107. Sharing Confidential Information.

In order to permit the insuring organization to assess the financial condition and performance of a participating credit union, the department shall, with the consent of such participating credit union, provide to the insuring organization any and all reports of examination conducted by, and orders and determinations issued by, the commissioner regarding that institution.

§95.108. Examinations.

- (a) The department may conduct examinations and investigations within or outside this state to determine whether an insuring organization has engaged, is engaging or is about to engage in any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to the insuring organization.
- (b) In lieu of an examination under this section, the commissioner may accept the examination report of another regulator authorized to examine the insuring organization.

§95.109. Fees and Charges.

- (a) An insuring organization shall pay the cost associated with an examination as prescribed in Section 97.113(k) of this title (relating to Foreign Credit Union Examination Fees).
- (b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the insuring organization.

§95.110. Enforcement; Penalty; and Appeal.

- (a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b), (c), (d) and (e), Finance Code, to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §121.002(11)(C). If the insuring organization does not comply with the order, the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, Finance Code, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.
- (b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Finality and Request for SOAH Hearing).

Subchapter B. Liquidating Agents

§95.200. Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights.

- (a) The department shall give prompt notice to the NCUA or the applicable insuring organization whenever the commissioner takes possession of the property and assets of a respective federally-insured or participating credit union. The Department shall give further prompt notice whenever the commissioner determines to liquidate the property and assets of such federally-insured or participating credit union.
- (b) If the commissioner finds that the closing of a credit union and the liquidation of the credit union's assets are in the public interest and the best interest of the credit union members, depositors, and creditors, the NCUA or, alternatively, the insuring organization shall be appointed liquidating agent for the purpose of liquidation or the winding up of the affairs of the credit union.
- (c) When any member's share or deposit account is paid, the NCUA or, alternatively, the insuring organization shall be subrogated to all rights of the member, up to the amount paid by the NCUA or the insuring organization to such member.

§95.205. State Not Liable for Any Deficiency.

Nothing in this chapter creates any liability upon this state for the payment of any funds to any credit union by reason of the acts or omissions of the NCUA or insuring organization, nor shall the state pay any deficiency of any credit union in the event the NCUA or insuring organization is unable to pay such deficiency.

Subchapter C. Guaranty Credit Union

§95.300. Share and Deposit Guaranty Credit Union.

- (a) The commissioner may authorize, with the advice and consent of the commission, the establishment of a share and deposit guaranty credit union. The charter shall be granted only on proof satisfactory to the commissioner that member credit union convenience and advantage will be promoted by the establishment of the guaranty credit union. In determining whether the convenience and advantage will be promoted, the commissioner shall consider:
- (1) Whether the organizational and capital structure and amount of initial capitalization is adequate for the business;
 - (2) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the credit unions sought to be served;
 - (3) Whether the credit union's guarantee fund and reserves are actuarially reasonable and computed in accordance with accepted loss reserving standards and principles;
 - (4) Whether the long-term financial condition of the entity would prejudice the interest of participating credit unions;
 - (5) Whether the proposed officers, directors, and managers have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that

the guaranty credit union will operate in compliance with the law and that the long term success of entity is probable; and

- (6) Whether the organizers are acting in good faith.
- (b) Prior to commencing business in this state, a guaranty credit union is required to file a written application supported by such information and data as the commissioner may require to make the findings necessary to issue a certification of incorporation. The organizers bear the burden of proof to establish that the incorporation of the guaranty credit union will promote credit union member convenience and advantage. The failure of an applicant to furnish required information, data, professional opinions, and other material is considered an abandonment of the application.
- (c) The commissioner may require, for submission to the department of public safety, the name and fingerprints of any organizer, director or officer of any guaranty credit union.
- (d) The commissioner may, in approving a guaranty credit union, impose such conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

§95.301. Authority for a Guaranty Credit Union.

If a guaranty credit union is authorized, the commissioner shall issue a certificate of incorporation which shall provide that said guaranty credit union shall operate as a central credit union including share and deposit guaranty insurance protection for members subject to supervision, regulation, and examination by the department.

§95.302. Powers.

The guaranty credit union, pursuant to Texas Finance Code §15.410(b) and to the powers contained in Subtitle D, Title 3, Texas Finance Code, may:

- (1) Purchase, hold, lease, receive, use, encumber, sell, exchange, transfer, lend, advance, convey, assign, give, grant, transmit, hypothecate, or dispose of property or funds of any description, nature, or kind or of any interest, rights, title, or privileges therein from or to any participating credit union or any corporation, association, or person, provided that any gift, grant, or transfer of a similar nature shall be made only with the approval of the commissioner;
- (2) Declare and pay dividends on the membership investment fund;
- (3) Make any type of investment authorized by law for a credit union chartered in this state;
- (4) Act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into the court for participating credit unions;
- (5) Accept funds or money for deposit by fiduciaries, trustees, or receivers if managing or holding funds on behalf of a participating credit union;
- (6) Accept funds or money for deposit by financial institutions, trust companies, or insurance companies, if membership or primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of participating credit unions or organizations of participating credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist operations of participating credit unions;
- (7) Act as custodian of individual retirement accounts or of pension funds of participating credit unions, or as trustee under pension and profit sharing plans of participating credit unions;

- (8) Make deposits, purchase shares, and invest in legally chartered credit unions, trust companies, or other financial institutions;
- (9) Impress a lien or exercise its right of setoff on the deposits, dividends, and interest of any participating credit union to the extent of any loans or other obligations due by the participating credit union;
- (10) Make or issue, with the approval of the commissioner, a guarantee or other form of written assurance to the appropriate person, association, corporation, or other entity which is reasonably necessary to facilitate the sale, conveyance, assignment, transfer, or other disposition of all or any part of the property or assets of a participating credit union, and otherwise assist in the merger, consolidation, conservation, suspension, or liquidation of a participating credit union upon the request and under the instruction of the commissioner;
- (11) Advance funds, with or without interest, in accordance with agreed terms and conditions, to aid participating credit unions to continue to operate and to maintain solvency or to maintain account balances with any financial institution in connection with the assumption of receivables from a participating credit union, or to meet liquidity requirements;
- (12) Purchase from a participating credit union any equitable or other interest in its assets at book value or at some other value mutually agreed upon by such credit union and the board of directors of the guaranty credit union, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as the board of directors of the guaranty credit union may determine, provided, however, that all such terms, conditions, agreements and values are approved in writing by the commissioner;
- (13) Exercise any setoff or lien rights that a participating credit union may have when the guaranty credit union is acting as conservator or liquidating agent for such credit union;
- (14) Exercise rights of subrogation to the extent of all rights the depositors or shareholders may have against a participating credit union to the extent of any payments made by the guaranty credit union to the depositors or shareholders of such credit union, including the right to receive the same dividends, as would have been payable to the depositor or shareholder;
- (15) Raise any defense to the payment of a claim or an insured account which a participating credit union could have raised, and when made, the actual payment of an insured account to any person by the guaranty credit union shall discharge the guaranty credit union to the same extent that payment to such person by the participating credit union would have discharged it from liability for the insured account;
- (16) Acquire a promissory note or other asset upon which a nonmember is liable, provided such acquisition is made, in the discretion of the guaranty credit union, to protect an inferior lien held by the guaranty credit union, a participating credit union, member of the guaranty credit union or a member of a participating credit union member of the guaranty credit union. Such acquisitions shall not be subject to the restrictions of §91.701 et. seq. of this title (relating to Loans);
- (17) Enter into contracts of insurance or reinsurance, insuring in whole or in part its contractual guarantees to participating credit unions and any other insurance or bonding company contracts necessary or advisable in the conduct of its business, provided a guaranty credit union shall not assume any risks from another insurer; and
- (18) Exercise the powers granted corporations organized under the laws of this state and such other additional incidental powers not inconsistent with these sections and Subtitle D, Title 3, Texas Finance Code, as may be necessary to enable the guaranty credit union to promote and carry out effectively its purposes.

§95.303. Subordination of Right, Title, or Interest.

No agreement which tends to diminish or defeat the right, title or interest of the guaranty credit union in any asset acquired by it, either as security for a loan or by purchase, shall be valid against the guaranty credit union unless such agreement shall be in writing; shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union; shall have been approved by the board of directors of the credit union with such approval reflected in the minutes of said board; and shall have been, continuously, from the time of its execution, an official record of the credit union.

§95.304. Capital Contributions; Membership Investment Shares; Termination.

(a) A guaranty credit union shall establish and maintain a guarantee fund. The fund shall be maintained at a normal operating level as defined by the board of directors of the guaranty credit union and approved by the commissioner, however, the normal operating level shall at all times not be less than one percent of the aggregate share capital of participating credit unions. The fund of the guaranty credit union shall be comprised of the following:

- (1) The membership investment shares of each participating credit union;
- (2) Retained and undivided earnings; and
- (3) Any reserves required by the commissioner.

(b) Each participating credit union shall contribute to and maintain with a guaranty credit union a membership investment share, in an amount equal to at least one percent of its insured shares and deposits. Each participating credit union's account shall be adjusted at least annually to reflect changes in the participating credit union's aggregate insured shares and deposits in accordance with procedures adopted by the guaranty corporation's board of directors.

(c) Membership investment shares of participating credit unions shall be established as pledged assets with appropriate explanatory footnotes on the books and records and in the financial statements of the participating credit unions. The guaranty credit union may utilize all of the assets of the guaranty credit union and accordingly reduce the membership investment shares of all participating credit unions, as required, at the discretion of its board of directors, and utilize such assets in accordance with the powers of the guaranty credit union as set out in these rules.

§95.305. Audited Financial Statements; Accounting Procedures; Reports.

(a) A guaranty credit union shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering the fiscal year, within one hundred days after the close of such fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant.

(b) If the opinion of the certified public accountant is other than unqualified pursuant to generally accepted auditing standards, the commissioner shall require the guaranty credit union to take such action as is considered appropriate to permit the removal of such qualification from the opinion.

(c) At a minimum, once every three years the annual audit of the guaranty credit union shall include an actuarial study of the capital adequacy of the credit union.

(d) All of the provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

§95.310. Fees and Charges.

(a) A guaranty credit union shall pay the fees prescribed in Section 97.113 of this title (relating to Operating Fees) in the same manner as any other credit union chartered under the Act.

(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the guaranty credit union.

Subchapter D. Disclosure for Non-Federally Insured Credit Unions

§95.400. Requirements of Participating Credit Unions.

(a) Every participating credit union shall give appropriate notice of the insurance status of its accounts printed in a manner acceptable to the commissioner. This notice shall be posted at all public entrances at each office and service facility (excluding shared branching facilities) and continuously displayed at each station or window (excluding automatic teller machines and point of sale terminals) where funds or deposits are normally received. At a minimum, the notice shall clearly and conspicuously disclose the following:

- (1) That members' accounts are insured by an insuring organization;
- (2) The name of the insuring organization;
- (3) The extent of the insuring organization's share and deposit insurance protection;

and

- (4) That accounts are not insured or guaranteed by any government or government-sponsored agency.

(b) At the time an account is established, a participating credit union shall provide written notice to its members that the share or deposit account will be cooperatively insured or guaranteed by an insuring organization. The notice shall include a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

(c) The noticed required by paragraph (a) of this section shall also be displayed on a participating credit union's web site home page and any other page where it accepts deposits or opens accounts. The dimensions and font size of the notice required by this paragraph must be of a reasonable size and clearly legible.

(d) Every participating credit union shall also include, in any literature, advertising, or other marketing materials related to joining the credit union, or soliciting funds for a share or deposit account, a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

EQUAL EMPLOYMENT AND WORKFORCE DIVERSITY PLAN

F. (b) Discussion, Consideration, and Possible Vote to Readopt the Department's Equal Employment and Workforce Diversity Plan.

BACKGROUND: Finance Code Section 15.313 requires the Commission to prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The Commission originally approved the policy on October 10, 1997 and readopted it last on October 17, 2014. The policy statement must be approved annually. Accordingly, the policy is presented for Commission consideration and approval.

RECOMMENDED ACTION: The Department requests that the Commission readopt the Equal Employment and Workforce Diversity Plan.

RECOMMENDED MOTION: I move that we readopt the Department's Equal Employment and Workforce Diversity Plan as recommended by Staff.



**STATE OF TEXAS
CREDIT UNION DEPARTMENT**

**EQUAL EMPLOYMENT AND
WORKFORCE DIVERSITY PLAN**

Approved by Commission on October 10, 1997

Readopted by Commission on October 17, 2014

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PREFACE

This Equal Employment and Workforce Diversity Plan has been developed to formalize the Texas Credit Union Commission's and the Texas Credit Union Department's commitment to equal employment opportunity. The plan is designed to assure that the Department's personnel policies and practices promote equal employment opportunities and diversity in the workplace.

The Department recognizes that the full and equal participation of minorities, women, and disabled persons in all employment opportunities is a necessary component of any effective equal employment and diversity program. To achieve the goals in practical and meaningful terms, the Department has established objectives and timetables, and has assigned specific responsibilities to Commission members and Department staff.

The Department's Equal Employment and Workforce Diversity Plan is intended to conform in good faith with Title VII of the Civil Rights Act of 1964, Section 503 of the 1973 Rehabilitation Act, the Age Discrimination in Employment Act of 1967, and the Texas Labor Code, as well as the guidelines adopted by the Equal Employment Opportunity Commission on October 17, 1989 and Presidential Executive Order 11246.

FOREWORD

The Department's Equal Employment and Workforce Diversity Plan has been developed in accordance with the principles set forth in the Equal Employment Opportunity Coordinating Council's Affirmative Action Policy Statement. These principles outline the intent and goals of the Department's philosophy:

Equal Opportunity is the law of the land. In the public sector of our society, this means that all persons, regardless of race, color, religion, sex, national origin, age or disability, shall have equal access to positions in public service limited only by ability to do the job.

...vigorous enforcement of the laws against discrimination is essential. But equally, and perhaps even more important, are affirmative, voluntary efforts to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial or ethnic characteristics. Without such efforts, Equal Employment Opportunity is no more than a wish...

TEXAS CREDIT UNION DEPARTMENT EQUAL EMPLOYMENT AND WORKFORCE DIVERSITY PLAN

Policy Statement

It shall be the public policy of the Texas Credit Union Department not to discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability status. The Department shall take all necessary affirmative steps to insure the employment and promotion of otherwise qualified minorities, women, and disabled persons who may be underrepresented in the Department's work force.

The Department is committed to the principles of equal employment opportunity law and the spirit of workplace diversity. This plan has been prepared to ensure that the Department's equal employment and diversity policies shall be properly implemented and to ensure that no artificial barriers shall be intentionally or otherwise created to deny applicants for employment or employees of the Department equal employment opportunities. The plan is available in the Department's office for review by employees and applicants for employment. The plan is available to the general public on request.

The Department is fully committed to protecting the rights of all current and prospective employees by ensuring that these individuals are being properly treated and provided with employment and advancement opportunities based solely on each individual's qualifications and performance, without regard to his or her race, color, religion, national origin, sex, age or disability. These rights are promulgated in the statutes listed in the preface.

Supervisors are required to ensure that all employees and prospective employees are afforded equal employment opportunities. Also, through the Department's recruiting process, supervisors must strive to attain a work force profile that is in parity with Texas' statewide labor force availability by race/ethnicity and sex.

Advancement within the Department's organizational structure will be attained by meritorious performance; however, occupational parity based upon Texas' statewide labor force availability will be given consideration during the selection process.

The supervisors of the Credit Union Department shall not discriminate with regard to employment opportunities. They must work together and communicate freely with each other to ensure discrimination is not fostered within the Department.

Responsibilities

The Department's Equal Employment and Workforce Diversity Plan has the support of the Commission members, Commissioner, and other management or supervisory personnel.

Specific responsibilities have been assigned and delegated to the Commission and management personnel to ensure that the necessary authority and power is available to implement the provisions of the plan.

The Commission is responsible for establishing policies and monitoring the implementation of the plan through periodic reports submitted by the Commissioner. The Commission, through Department staff, shall review the plan annually for purposes of revision or modification. The staff shall review the work force analysis and personnel policies, procedures, and practices and shall include recruitment, selection, promotions, job descriptions, classifications, compensation, discipline, or other terms and conditions affecting the equal employment opportunities of applicants for employment or employees. Any changes to the plan resulting from the annual review will be submitted to the Commission for approval.

The Assistant Commissioner shall be designated as the representative of the Department with the authority for execution of the plan. It shall be the responsibility of the Assistant Commissioner to ensure that compliance with the Commission's policies is implemented in an efficient and effective manner.

Goals

- I. To insure objectivity, consistency, uniformity and job relatedness through design and implementation of appropriate personnel policies, procedures and practices which affect the equal employment opportunities of the Department's employees and applicants for employment.
- II. To insure a diverse work force through the establishment of a monitoring and reporting system.

Actions to Achieve Goals

- I. Policy Dissemination
 - A. The Department shall use the communication network of the Texas Workforce Commission to provide notice of the Department's equal employment and diversity policy. In notifications posted for vacant positions, including posting on the Department's website, the Department shall include information that it is an equal employment opportunity employer.
 - B. As part of new employee in-processing, each new employee shall receive a copy of the Department's Equal Employment and Workforce Diversity Plan and its Equal Employment Policy.
- II. Recruitment

- A. To the extent possible, the Department shall utilize a wide range of recruiting sources to secure the maximum number of qualified minority and female applicants for available positions within all classification. Such sources shall include, as appropriate, statewide minority and female associated organizations, educational institutions, newspapers, and the Texas Workforce Commission. The Department shall continue to expand and update its list of such recruiting sources including appropriate contact persons.
- B. Notices of vacant positions shall be posted in accordance with the regular ten working day posting rule. Where vacancies occur in classifications that have been identified as being underutilized, the Department shall place emphasis on recruiting from minority and female applicant sources, by distributing position notices to all appropriate recruitment sources identified in II.A..
- C. An Applicant Flow Record shall be maintained to determine the mix of candidates applying for vacant positions according to race, national origin, and sex. This information shall be incorporated into the Agency Application Log.

III. Selection Procedures

The U. S. Equal Employment Opportunity Commission, the U. S. Civil Service Commission, the Department of Labor and the Department of Justice have issued Uniform Guidelines on Employee Selection Procedures. These guidelines address all phases of an employer's selection process and provide suggested requirements that, if adhered to, will greatly reduce an employer's susceptibility to charges of employment discrimination that involve the selection process.

- A. Position audits shall be conducted on a continuing basis (within resources available) to ensure that current position descriptions accurately reflect the actual duties, tasks, and responsibilities required to successfully perform the job. These audits shall also be used to determine the appropriateness of the minimum qualifications for the positions and to ensure that only valid, job-related qualifications are required.
- B. All testing and screening procedures shall be reviewed on a continuing basis (within resources available) to ensure their job-relatedness and validity. Information acquired from the position audits shall be used to construct valid, job-related tests and screening procedures.

- C. All employment interviews shall be reviewed for job relatedness. Non-job-related questions and those items that may tend to screen out a particular ethnic or racial group shall be eliminated. Technical assistance in the construction of interview questions and interviewing procedures shall be given to hiring authorities.
- D. All test scores and interview results shall be maintained for each classification in accordance with the State's record retention schedule. This information is to assess the presence of artificial barriers to equal employment opportunity.

IV. Upward Mobility

- A. Employees shall be encouraged to participate in training or educational opportunities that enhance their skills.
- B. In-service training programs shall be designed and implemented to increase promotion opportunities for employees. On-the-job training and/or cross-training programs shall be developed to expose employees to a broad range of job duties and experiences.

Discipline Procedures

The Department shall institute a progressive discipline system that is linked to specific policies and procedures with which personnel are expected to comply. Such a progressive discipline system will be designed in steps of severity ranging from written warnings to termination. This disciplinary system shall be designed and applied to ensure uniformity and consistency with Department policies prohibiting discrimination.

Appeal and Grievance Procedures

The Department shall provide appeal and grievance procedures designed to resolve complaints of employment discrimination alleged by employees. These procedures shall provide aggrieved employees the opportunity to discuss their problems at several levels.

These procedures shall help protect both the employee and the employer by providing both parties with the opportunity to have their position reviewed and considered by an impartial authority. These procedures shall provide safeguards against any and all occurrences of discrimination or any other preferential treatment that may adversely affect employees of the Department.

Monitoring Achievement

The Assistant Commissioner shall be responsible for administering and monitoring the implementation of the Department's Equal Employment and Workforce Diversity Plan and for identifying any revisions necessary to assure effective application. The Assistant Commissioner shall review such reports as include the following Annual EEO/Diversity Progress Report:

A. Workforce Analysis by Race, National Origin, Sex, and EEO Category

B. Personnel Transactions

The Commissioner shall submit to the Commission, at each regular Commission meeting, a status report which shall include a record of the following personnel transactions: 1) Salary report, listed by race, national origin, sex, and experience, 2) employees promoted, listed by race, national origin, sex, and experience; and 5) employees terminated and resigned.

C. Applicant Flow

The Applicant Flow Report shall include a breakdown of all applicants by race, national origin, sex, and position vacancy. The report, which is part of the Agency Application Log, shall also indicate whether or not a job offer was made, and the person(s) who made the employment decision.

D. Appeal and Grievance Status

This report shall be submitted to the Commission. It will provide an itemized statistical summary of the number, status, and issues raised by employee grievances and discrimination complaints. No report is necessary if there have been no grievances or discrimination complaints.

Time Frame For Implementation

The Department shall implement and review the action program previously identified annually.

**ON-LINE TOOLS USED BY THE DEPARTMENT TO
SOLICIT FEEDBACK**

F. (c) Discussion of the On-Line Tools Being Used by the Department to Solicit Feedback from Credit Unions and Other Interested Persons.

BACKGROUND: One thing that is very important to the Department is the feedback it receives from credit unions. It tells us if we are doing the right things and moving in the right direction and it tells us where we need to make improvements. We believe the voice of credit unions is best heard as an ongoing conversation and thus we provide several avenues for credit unions to communicate with us such as calling in, sending an email through our feedback form on the website, visiting with us at meetings and conferences, or providing opportunities to complete one of our survey forms.

At the June commission meeting, questions were raised concerning the methods and procedures used by the Department for obtaining information about customer satisfaction from credit unions. Staff will briefly highlight the current touch points and answer any further questions from the Commission.

RECOMMENDED ACTION: No action recommended.

EXECUTIVE SESSION

(closed to public)

G. Under Section 551.074 of the Texas Government Code, the Commission will enter into Executive Session for the purpose of discussing certain personnel issues:

(a) *Consideration of the Appointment of Robert Baxter as the new Deputy Commissioner.*

(b) *Consideration of the Commissioner's Annual Performance Evaluation and FY 2015 Remuneration, Performance Targets and Evaluation Form.*

BIOGRAPHICAL SKETCH

ROBERT N. BAXTER II

Robert Baxter began his career with the Credit Union Department in 1982 as a field examiner, after graduating from the University of Central Oklahoma with a Bachelor's Degree in Finance. He spent approximately 14 years in agency's north zone and held various positions, including Financial Examiner, Senior Field Specialist, and Field Manager.

In 1997, Robert transferred to Austin, and served as the Field Manager for the agency's central zone; he served in this capacity until 2003, at which time he was promoted to the position of Chief Examiner. In his role as Chief Examiner, Robert is responsible for various internal and external examination related functions, including but not limited to the examination of the most difficult and/or complex and problem credit unions; assisting the Deputy Commissioner in the oversight of the Department's examination program; planning and coordinating rehabilitation efforts of troubled credit unions.

Robert is responsible for the development and oversight of the Department's training programs for new and seasoned examiners; supervision and evaluation of the examination staff; and performing other administrative duties and/or special projects related to Department operations and the regulation and supervision of Texas state-chartered credit unions. Additionally, he is currently serving as the Acting Deputy Commissioner.

OTHER BUSINESS

- H. (a) Vote on Matters Discussed in Executive Session** – Discussion and Possible Vote to Approve the Appointment of Robert Baxter as the new Deputy Commissioner.
- (b) Vote on Matters Discussed in Executive Session** – Discussion and Possible Vote to Approve FY 2015 Performance Targets, Remuneration, and Evaluation Form for the Commissioner.
- (c) Next Commission Meeting** – The next regular meeting of the Commission has been tentatively scheduled for February 20, 2015.

Adjournment

CREDIT UNION DEPARTMENT

INDUSTRY STATUS

AND

DEPARTMENTAL OPERATION

AFFIRMATIVE ACTION/EEO QUARTERLY REPORT
4th Quarter - FISCAL YEAR 2014

During this fiscal year the Department is authorized to have 27.5 Employees.

	White		Black		Hispanic		Asian		Total
	Male	Female	Male	Female	Male	Female	Male	Female	
No. of Employees on 3rd quarter	12	3	0	4	2	1	1	0	23
Resignations (retirees)	0	0	0	0	0	0	0	0	0
New Hires	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
No. of Employees on 4th quarter	12	3	1	4	2	1	1	0	24
Resignations (retirees)	1	0	0	0	0	0	0	0	1
New Hires --	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>3</u>
Grand Total of Employees	<u>12</u>	<u>4</u>	<u>2</u>	<u>4</u>	<u>2</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>26</u>
Promotions - 4th Quarter									0

Percent Male 65.38%
 Percent Female 34.62%

Salary Breakdown

	<u>3rd quarter</u>	<u>4th quarter</u>	<u>Average Tenure</u>	
Average of Salaries	\$ 71,394	\$ 72,202	129.4	months
Average Salaries - White	\$ 77,838	\$ 77,387	139.7	months
Male	12 \$ 78,574	\$ 83,458	160.4	months
Female	4 \$ 63,458	\$ 59,174	82.7	months
Average Salaries - Black	\$ 60,865	\$ 62,306	160.7	months
Male	2 \$ 63,156	\$ 52,878	3.6	months
Female	4 \$ 60,865	\$ 67,020	160.7	months
Average Salaries - Hispanic	\$ 55,821	\$ 59,592	148.5	months
Male	2 \$ 54,884	\$ 59,526	31.8	months
Female	1 \$ 57,696	\$ 59,724	381.7	months
Average Salaries - Asian	\$ 83,531	\$ 86,448	172.8	months
Male	1 \$ 83,531	\$ 86,448	172.8	months
Female	0 \$ -	\$ -	0.0	months
	26			

Exmr. Experience - 4th quarter

Less than 1 year	4	Average Salary	\$ 47,739
1 - 2 years	2	Average Salary	\$ 47,760
2 - 5 years	3	Average Salary	\$ 63,108
5 - 10 years	2	Average Salary	\$ 78,153
Over 10 years	<u>7</u>	Average Salary	\$ 93,961
Total	18	Average Salary	\$ 71,657

Survey Responses from June 2014 thru September 2014

Examinations

Reflects summary responses from 34 surveys received or 92 % of the 37 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. The lead-time was sufficient to gather the information requested prior to the on-site examination.	28	4	0	2	2	1
Q 2. The pre-examination requests were reasonable in scope.	28	7	0	0	1	1
Q 3. Materials requested in the pre-examination were used during the examination.	21	12	2	0	1	1
Q 4. The pre-examination request made the examination run more efficiently.	29	5	1	0	1	1
Q 5. The examiners were knowledgeable about your credit union.	22	9	0	3	2	1
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	24	7	1	2	2	1
Q 7. The examiners were responsive to your questions and concerns.	25	5	2	2	2	1
Q 8. The examiners communicated effectively with the credit union throughout the examination.	25	5	1	3	2	1
Q 9. The examiners treated you professionally.	28	2	3	0	2	2
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	28	5	1	0	2	1
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	31	2	0	1	2	1
Q 12. Management was given the opportunity to react to the examination findings.	27	5	0	1	2	2
Q 13. The examination was completed within a reasonable timeframe.	26	2	2	4	2	1
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	26	6	0	1	2	2
Q 15. The report was easy to understand.	28	3	0	2	3	1
Q 16. The report accurately portrayed your credit union's practices and condition.	21	11	0	1	3	1
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	26	5	1	2	1	2
Q 18. The report contained useful recommendations for improving safety and soundness practices.	19	11	1	2	3	1

Examinations (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 19. The examination findings will assist you in enhancing your safety and soundness practices.	21	8	3	1	3	1
Q 20. The examination was conducted in a fair and objective manner.	32	0	1	2	2	0

Applications

Reflects summary responses from 5 surveys received or 38 % of the 13 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. Department staff provided timely and accurate feedback/answers.	5	0	0	0	0	0
Q 2. Department staff communicated with me in a courteous and professional manner.	5	0	0	0	0	0
Q 3. The application process was efficient.	5	0	0	0	0	0
Q 4. The Department's requests for information were reasonable.	5	0	0	0	0	0
Q 5. The Department's website was helpful in completing my application.	2	1	2	0	0	0

Complaints

Reflects summary responses from 9 surveys received or 21 % of the 43 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. It was relatively easy to file a complaint with the Department.	7	1	0	0	1	0
Q 2. Department staff communicated with me in a courteous and professional manner.	6	3	0	0	0	0
Q 3. I believe Department staff understood the basis of my complaint.	6	0	1	0	2	0

Complaints (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 4. The response provided by the Department addressed the important aspects of my complaint.	5	1	0	1	2	0
Q 5. The explanation given was fair considering applicable laws.	5	1	0	1	2	0
Q 6. The Department website was helpful in the complaint process.	5	1	1	2	0	0

Survey Responses from September, 2013 thru September, 2014

Examinations

Reflects summary responses from 78 surveys received or 40 % of the 109 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. The lead-time was sufficient to gather the information requested prior to the on-site examination.	62	10	0	3	2	1
Q 2. The pre-examination requests were reasonable in scope.	57	19	0	0	1	1
Q 3. Materials requested in the pre-examination were used during the examination.	51	21	4	0	1	1
Q 4. The pre-examination request made the examination run more efficiently.	60	11	3	1	1	2
Q 5. The examiners were knowledgeable about your credit union.	45	19	4	7	2	1
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	48	19	2	6	2	1
Q 7. The examiners were responsive to your questions and concerns.	54	9	6	4	4	1
Q 8. The examiners communicated effectively with the credit union throughout the examination.	53	13	1	7	3	1
Q 9. The examiners treated you professionally.	61	6	6	1	2	2
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	59	12	2	1	3	1
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	66	6	1	1	3	1
Q 12. Management was given the opportunity to react to the examination findings.	57	12	3	2	2	2
Q 13. The examination was completed within a reasonable timeframe.	55	10	3	7	2	1
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	56	12	1	5	2	2
Q 15. The report was easy to understand.	56	11	3	3	3	2
Q 16. The report accurately portrayed your credit union's practices and condition.	41	20	2	8	4	3
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	55	12	3	5	1	2
Q 18. The report contained useful recommendations for improving safety and soundness practices.	40	20	9	4	4	1

Examinations (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 19. The examination findings will assist you in enhancing your safety and soundness practices.	43	16	9	5	4	1
Q 20. The examination was conducted in a fair and objective manner.	61	2	7	6	2	0

Applications

Reflects summary responses from 19 surveys received or 33 % of the 57 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Q 1. Department staff provided timely and accurate feedback/answers.	16	3	0	0	0
Q 2. Department staff communicated with me in a courteous and professional manner.	17	2	0	0	0
Q 3. The application process was efficient.	14	3	1	1	0
Q 4. The Department's requests for information were reasonable.	15	3	1	0	0
Q 5. The Department's website was helpful in completing my application.	11	4	3	1	0

Complaints

Reflects summary responses from 34 surveys received or 26 % of the 129 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Q 1. It was relatively easy to file a complaint with the Department.	19	6	5	2	2
Q 2. Department staff communicated with me in a courteous and professional manner.	21	7	3	1	2
Q 3. I believe Department staff understood the basis of my complaint.	17	5	3	1	7

Complaints (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 4. The response provided by the Department addressed the important aspects of my complaint.	15	7	3	2	7	0
Q 5. The explanation give was fair considering applicable laws.	14	5	4	2	8	0
Q 6. The Department website was helpful in the complaint process.	15	10	4	3	2	

Texas Credit Union Department

Executive Summary

As of 08/31/14

*Information from call report cycle

ACTIVITY	YTD 2012	YTD 2013	2014 FISCAL YEAR					YTD
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr		
MOVEMENT PROFILE								
Number of CUs	195	190	189	189	188	188		
Total Assets (Millions)	*27,656	*29,549	*29,793	*30,491	*31,602	*31,715		
APPLICATIONS (Received)								
Charters	1	0	0	0	0	0	0	
Foreign Branches	0	0	0	0	0	0	0	
Conversions	1	1	0	0	0	0	0	
Mergers	6	13	1	0	1	1	3	
Bylaws	49	53	14	23	12	15	64	
Articles of Incorporation	7	2	3	1	0	1	5	
Total	64	69	18	24	13	17	72	
EXAMINATION ACTIVITIES								
Regular	94	90	20	10	28	10	68	
Joint	77	70	25	22	25	23	95	
Remedial	43	44	10	11	16	7	44	
Total	214	204	55	43	69	40	207	
ENFORCEMENT ACTIONS (In Force)								
Determination Letters	8	5	3	4	4	5		
LUAs	0	2	3	3	2	2		
Cease & Desist Orders	0	1	0	0	1	0		
Dividend Restrictions	0	0	0	0	0	0		
Conservatorships	1	1	1	1	1	1		
Liquidations	2	1	1	1	1	1		
Total	11	10	8	9	9	9		
PERSONNEL STAFFING								
Field Examiners	14	15	15	13	14	17		
Total Personnel	24	25	24	23	24	26		
FINANCIAL OPERATIONS (In Thousands)								
Budgeted Expenditures	2,815	2,969	756	756	756	756	3,024	
Actual Expenditures	2,524	2,769	687	681	727	914	3,009	
Gifts and Bequests	7,729	n/a	n/a	n/a	n/a	n/a	n/a	
Actual Revenue	2,829	2,746	1,827	2	1,020	2	2,851	

Texas Credit Union Department
Application Activities - Detail

ACTIVITY	4th Qtr 2012	4th Qtr 2013	2014 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
CHARTERS							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: New Applications Filed	1	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	1	0	0	0	0	0	
FOREIGN BRANCH OFFICES							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: New Applications Filed	0	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	0	0	0	
CONVERSIONS							
Pending at Beginning of Period	1	0	1	0	0	0	
Add: Applications Filed	0	1	0	0	0	0	
Less: Approved	0	0	1	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	1	1	0	0	0	0	
MERGERS							
Pending at Beginning of Period	4	4	5	4	1	2	
Add: Applications Filed	1	5	1	1	1	1	
Less: Approved	2	4	2	4	0	0	
Denied/Withdrawn	0	0	0	0	0	1	
Pending at End of Period	3	5	4	1	2	2	
BYLAWS							
Pending at Beginning of Period	3	3	7	1	0	1	
Add: Applications Filed	15	17	14	23	12	15	
Less: Approved	15	13	19	23	10	11	
Denied/Withdrawn	1	0	1	1	1	0	
Pending at End of Period	2	7	1	0	1	5	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	1	1	0	2	2	0	
Add: Applications Filed	2	0	3	1	0	1	
Less: Approved	3	1	0	1	2	1	
Denied/Withdrawn	0	0	1	0	0	0	
Pending at End of Period	0	0	2	2	0	0	

Texas Credit Union Department
Movement Profile - Condition Summary

CAMEL RATING	4th Qtr 2012	4th Qtr 2013	2014 FISCAL YEAR			
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
1	31	27	24	26	26	26
2	123	128	132	133	133	133
3	36	30	31	28	28	28
4	5	5	2	1	1	1
5	0	0	0	0	0	0
Total	195	190	189	188	188	188

Texas Credit Union Department
Enforcement Actions - Detail

TYPE OF ACTION	In Force 8/31/2012	Issued	Activity Terminated	In Force 8/31/2013	Issued	Activity Terminated	In Force 8/31/2014
Determination Letters	8	3	1	5	1	1	5
LUAs	0	1	0	2	1	1	2
Cease & Desist Orders	0	1	0	1	0	1	0
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	1	0	0	1	0	0	1
Liquidations	2	0	1	1	0	0	1
Total	11	5	2	10	2	3	9

Texas Credit Union Department
Examination Activities
Analysis of Current Year

TYPE OF EXAM	Budgeted Number	Actual Number	% Budget	% of Total	% Mailed Within 20 Days
Regular	90	68	76	36	100
Joint	82	95	116	50	100
Remedial	40	44	110	23	100
Total	212	207	98	98	100

**Texas Credit Union Department
Movement Profile - Consumer Complaints**

CONSUMER COMPLAINTS	YTD 2012	YTD 2013	2014 FISCAL YEAR				YTD
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
Received	183	223	59	56	57	52	224
Closed	174	223	59	62	50	59	230
Avg. Days to Process	13	15	14	14	16	13	14
% Resolved in 30 Days	100%	100%	100%	100%	96%	98%	

**Texas Credit Union Department
Consumer Complaint - Detail**

TYPES OF COMPLAINTS	YTD 2012	YTD 2013	2014 FISCAL YEAR				YTD
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
LOAN ISSUES							
Collections	40	28	1	3	3	5	12
Procedure Irregularity	19	11	6	15	8	5	34
Denial	5	5					0
Cross Collateralization	3	4					0
Credit Report Issues	5	11	5	5	4	7	21
Collateral Protection Insurance	7	10	2		2	1	5
ACCOUNT ISSUES							
NSF/Overdraft	21	30					0
Electronic Funds Transfer	7	6	3	2		2	7
Holds on Checks	8	9		1			1
Posting Order	3	5	1	1	1	4	7
Fraud/Unauthorized	5	9	3	6	4	2	15
Fees	4	12	13	7	4	5	29
Billing Disputes	0	0	3	2			5
Other	0	0	3	4	8	6	21
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	29	37	8	7	7	13	35
Account Closed/Frozen	10	12	3	1	1	3	8
Customer Service	8	34	5	4	7	6	22
Deceptive Advertisement	0	0	1	2			3
Vehicle Title	0	0	1	2	1		4
Website Issues	0	0	1				1
TOTAL	174	223	59	62	50	59	230

Texas Credit Union Department
Merger/Conversion Finalized

ACTIVITY	YTD 2012	YTD 2013	2014 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MERGERS							
Number:							
State-to-State	4	5	1				1
Federal-to-State	4	5		3		2	5
State-to-Federal	2	1	1	1			2
Total	10	11	2	4	0	2	8
Assets:							
State-to-State	73,141,273	53,478,655	20,338,698				20,338,698
Federal-to-State	20,098,171	216,192,063		57,388,846		41,655,673	99,044,519
State-to-Federal	11,387,797	1,103,403	128,479	5,711,216			5,839,695
Total	104,627,241	270,774,121	20,467,177	63,100,062	-	41,655,673	125,222,912
CONVERSIONS							
Number:							
Federal-to-State	1	2	1				1
State-to-Federal	0	0					
State-to-Mutual Bank	0	0					
Assets:							
Federal-to-State	1,186,980,460	507,898,295	441,814,185	-	-		441,814,185
State-to-Federal	-						
State-to-Mutual Bank							
Total	1,186,980,460	507,898,295	441,814,185	-	-	-	441,814,185

CUD
Web Site Statistics
Report Range: 06/01/14 thru 08/31/14

	Number
Total Visits:	
Number of Visits	6,307
Visitors	3,465
Page Views	16,837
Number of Repeat Visitors	3,195
Average Pages per Visit	2.67
Average Visit Duration	3:14
Most Requested Pages:	
Home Page	5,954
Texas Rules for Credit Unions	1,129
Employment	1,003
Job Postings	872
Website Search	500
Most Downloaded Files:	
Newsletter August 2014	362
Credit Union Listings 07-09-14	208
Newsletter July 2014	160
Finance Code 09-13	113
Deputy Commissioner Job Posting 07-14	112