



CREDIT UNION COMMISSION

Rules Committee Meeting

Credit Union Department Building

914 East Anderson Lane

Austin, Texas

Thursday, October 15, 2015

**(2:00 p.m.) or Upon Adjournment of the
Commissioner Evaluation Committee Meeting
Whichever is Later**

AGENDA

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A.	Call to Order (2:00 p.m.) – Chair Vik Vad	4
	a. Ascertain Quorum	
	b. Appoint Recording Secretary	
	c. Invitation for Public Input Regarding Rulemaking for Future Consideration	
B.	Receive and Approve Minutes of the Rules Committee Meeting of June 18, 2015	7
C.	Unfinished Business	
	a. Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale Of Fixed Assets	19
	b. Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.802 Concerning Other Investments	23
	c. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.803 Concerning Investment Limits and Prohibitions	32
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	e. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.901 Concerning Reserve Requirements	41
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	g. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed New 7 TAC Section 97.206 Concerning Posting of Certain Contracts and Enhanced Contract and Performance Monitoring	52

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- D.** New Business
- a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Part 6, Chapter 91, Subchapter O (relating to Trust Powers) in its entirety **58**
 - b. Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations **64**
 - c. Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.301 Concerning Field of Membership **73**
 - d. Discussion of and Possible Vote to Establish Date for Next Committee Meeting (February 18, 2016 at 2:00 p.m.)

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.

Meeting Accessibility: Under the Americans with Disabilities Act, the Credit Union Commission will accommodate special needs. Those requesting auxiliary aids or services should notify Linda Clevlen, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752--(512) 837-9236, as far in advance of the meeting as possible.

A

CALL TO ORDER

TEXAS CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- *Vik Vad, Chairman*
- *Kay Stewart, Vice Chair*
- *Yusuf Farran*
- *Steven “Steve” Gilman*
- *Gary Tuma*
- *Manuel “Manny” Cavazos, Ex-Officio*

Legal Counsel

- *Zindia Thomas*

Staff

- *Harold E. Feeney*
- *Shari Shivers*
- *Isabel Velasquez*

FUTURE COMMITTEE MEETING DATES

The committee meets on an “as needed” or “subject to the call of the chair” schedule. If a meeting is scheduled, it would normally begin at 2:00 p.m. on the day before a regularly scheduled commission meeting.

B

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on June 18, 2015, is located under ***TAB B***.

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

RECOMMENDED MOTION: I move that the minutes of the Committee's June 18, 2015, meeting be approved as presented.

**RULES COMMITTEE
MEETING MINUTES
JUNE 18, 2015**

A. CALL TO ORDER – Chairman Rob Kyker called the meeting to order at 2:00 p.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 Missy Morrow and Kay Stewart. Sherri Merket and John Yoggerst were absent due to family and personal medical matters respectively. Commission Members Gary Janacek, Gary Tuma, and Vik Vad also attended the meeting. Assistant Attorney General Zindia Thomas was in attendance to serve as legal counsel. Staff members in attendance were Harold E. Feeney, Commissioner and Stacey McLarty, Assistant Commissioner and General Counsel. Chairman Kyker appointed Isabel Velasquez as recording secretary. The Chair also inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**June 9, 2015, TRD#2015003889**).

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Chairman Kyker invited public input on matters regarding rulemaking for future consideration by the committee. There was none.

B. RECEIVE MINUTES OF PREVIOUS MEETING (June 19, 2014)

A motion was made and seconded to accept the minutes of the June 19, 2014 meeting as presented. The motion was unanimously adopted.

C. NEW BUSINESS

(a) **Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.802 Concerning Other Investments.** Commissioner Feeney explained that the proposed amendments would add new definitions, clarify and amend existing terms in the rule and ensure that credit unions have parity with federal credit union investment authority.

After a short discussion, Ms. Morrow moved to recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.802 concerning other investments. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(b) **Discussion of and Possible Vote to Approve for Publication and Comment the Proposed 7 Section 91.803 Concerning Investment Limits and Prohibitions.** Commissioner Feeney noted that a credit union may not invest more than 50% of its net worth with any single obligor or related obligor. He indicated that the proposed amendments would exclude from that limitation any deposits held by a Federal Reserve Bank or any investment insured or guaranteed by the United States Government. Mr. Feeney also explained that the proposed amendments would make substantive changes to the list of prohibited activities.

After a brief discussion, a motion was made and seconded to recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.803 concerning investment limits and prohibitions. The motion was unanimously adopted.

(c) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.805 Concerning Loan Participation Investments. Commissioner Feeney explained that this rule pertains to the purchase of a loan where the borrower is neither a member of the credit union nor member of another participating credit union. He noted that the proposed amendments would clarify the limitations applicable to the purchase of this type of loan participation.

After a short discussion, Ms. Stewart moved to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.805** concerning loan participation investments. Ms. Morrow seconded the motion and the motion was unanimously adopted.

Due to a technical issue related to information contain in the agenda packet on the member's iPads, the Chair rearranged the agenda and the Committee took up consideration of the re-adoption of Rules 91.801, 91.804, 91.808, and 91.902 before considering potential amendments to Rule 91.901.

(e) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.801 (Investments in Credit Union Service Organizations), 91.804 (Custody and Safekeeping), 91.808 (Reporting Investment Activities to the Board of Directors), and 91.902 (Dividends). Commissioner Feeney reported that Section 2001.39, Government Code, requires that the Commission 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. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review of each rule. He indicated that staff had reviewed Chapter 91, Subchapter H and I

and is recommending that no changes be made to 7 TAC Sections 91.801, 91.804, 91.808, and 91.902.

After a brief discussion, a motion was made and seconded to recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.801, 91.804, 91.808 and 91.902** continue to exist and that the rules be readopted without change. The motion was unanimously adopted.

(d) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.901 Concerning Reserve Requirements. Commissioner Feeney noted that the proposed amendments would impose a new requirement on credit unions that are not able to make the transfers of income, required by this rule, for three consecutive quarters. He explained that those credit unions would be required to develop a written plan to come into compliance with the rule and that the credit union's plan would be considered a written agreement with the Department.

After a short discussion, a motion was made, and seconded to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.901** concerning reserve requirements. The motion was unanimously adopted.

(f) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets. Commissioner Feeney noted that the proposed amendments would allow more flexibility to credit unions for investments in property and would reduce regulatory burden for credit unions. He indicated that the proposed

amendments would change the title of the rule to “Credit Union Ownership of Property” to better reflect the scope and purpose of the rule. The proposed amendments would also streamline and clarify definitions, reduce the requirement for credit unions to obtain prior approval from the Department to invest in premises, and explain the standards for evaluating a request to invest in credit union premises in an amount that exceeds the credit union’s net worth. Mr. Feeney also point out that the proposed increase in the aggregate limit should not be interpreted as an invitation for a credit union to make excessive, speculative, or otherwise irresponsible investments in fixed assets. Rather the proposal reflects the Department recognition that relief from the prescriptive limit is appropriate, but credit union investments in fixed assets are, and will continue to be, subject to supervisory review. If a credit union has an elevated level of fixed assets, the Department will maintain close oversight to ensure it conducts prudent planning and analysis with respect to fixed asset acquisitions, can afford any such acquisition, and properly manages any ongoing risk to its earnings and capital.

After a brief discussion, Ms. Morrow moved to recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.401 concerning loan participation investments. Ms. Stewart seconded the motion and the motion was unanimously adopted.

Chairman Kyker moved to excuse the absence of both Sherri Merket and John Yoggerst from this meeting (June 18, 2015). Ms. Stewart seconded the motion, and the motion was unanimously adopted.

Commissioner Feeney alerted the Committee to the fact that it will begin the mandatory review of the field of membership rule (Rule 91.301) at the next

meeting. He indicated that it is the intention of the Department to recommend changes to this rule.

Ed Zingleman – Board Member, Texas Dow Employees Credit Union.

Mr. Zingleman voiced his support for updating the field of membership rule.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 2:44 p.m.

Vik Vad
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

C

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.

UNFINISHED BUSINESS

The Committee will discuss and possibly vote on potential recommendations to the Credit Union Commission concerning the following items:

- a. The adoption of the Proposed Amendments to **7 TAC Section 91.401** Concerning Purchase, Lease, or Sale of Fixed Assets.
- b. The adoption of the Proposed Amendments to **7 TAC Section 91.802** Concerning Other Investments.
- c. The adoption of the Proposed Amendments to **7 TAC Section 91.803** Concerning Investment Limits and Prohibitions.
- d. The adoption of the Proposed Amendments to **7 TAC Section 91.805** Concerning Loan Participation Investments.
- e. The adoption of the Proposed Amendments to **7 TAC Section 91.901** Concerning Reserve Requirements.

RECOMMENDED ACTION: The Department requests that the Committee take action as indicated on the documents contained on ***Tab C***.

PURCHASE, LEASE, OR SALE OF FIXED ASSETS

C. (a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.401.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.401. No comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.401.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.401 as previously published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code Title 7, §91.401 concerning the Purchase, Lease, or Sale of Fixed Assets, with no changes to the text published in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4287).

The amendments change the title of the rule to “Credit Union Ownership of Property” to better reflect the scope and purpose of the rule. The amendments streamline and clarify definitions of terms, reduce the requirement for credit unions to obtain prior approval from the Department to invest in premises, explain the standards for evaluating a request to invest in credit union premises in an amount that exceeds the credit union’s net worth, explain that the Department may impose special conditions for approval of such a request in order to protect the safety and soundness of the credit union, and eliminate the specific format requirements for the written request to the Department.

The Commission received no comments on these proposed changes.

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.

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, Subtitle D of the Texas Finance Code, and under Texas Finance Code §123.103, which concerns credit union powers to purchase and sell property.

The specific section affected by the proposed amended rule is Texas Finance Code, §123.103.

§91.401. Credit Union Ownership of Property.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Equipment includes all movable furniture, fixtures, and equipment of the credit union, its branch offices, and consolidated credit union service organizations, including automobiles and other vehicles, and any lien on the above.

(2) Immediate family member--a spouse or other family member living in the same household.

(3) Premises include the cost less accumulated depreciation, of land and buildings actually owned and occupied (or to be occupied) by the credit union, its branch offices, and consolidated credit union service organizations. This includes vaults, fixed machinery, parking facilities, and real estate acquired and intended, in good faith, for future expansion. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.

(4) Senior Management Employee--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) Investment Limitations on Premises.

Without the prior written consent of the Department, a credit union may not directly or indirectly invest an amount in excess of its net worth in premises.

(c) Restrictions on Ownership of Property.

A credit union shall not acquire premises for the principal purpose of engaging in real estate rentals or speculation.

(d) Transactions with insiders.

Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(1) sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family members of such individual; or

(2) purchase or lease an asset in which a director, committee member, senior management employee, or immediate family members of such individual has an interest.

(e) Use requirement for premises.

If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.

(f) Consent to Exceed Limitation.

Generally, a credit union need not obtain the Department's approval to invest in premises. However, prior approval is required if the total aggregate investment in premises will exceed the credit union's net worth. A credit union shall submit such statements and reports as the Department may require in support of the higher investment limit.

(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:

(A) Consistency with safe and sound credit union practices;

(B) The reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and

(C) The effect of the investment on future earnings.

(2) The Department will consider denying a request for an additional investment in credit union premises when:

(A) The additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or

(B) The credit union has not demonstrated a reasonable need for the additional investment.

(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.

OTHER INVESTMENTS

C. (b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.802.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.802. No comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.802.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.802 as previously published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code Title 7, §91.802 concerning Other Investments, with no changes to the text published in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4288).

The amendments add definitions of certain terms, clarify and amend existing terms in the rule, and explain the standard for understanding terms not explicitly defined in the rule.

The amendments are adopted as a result of the Credit Union Department's general rule review, which was conducted in accordance with Texas Government Code §2001.039.

The Commission received no comments on these proposed changes.

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.

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 §124.351 which explains permitted investments.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

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§91.802. Other Investments.

(a) Definitions. Unless the context clearly indicates otherwise, these words and terms, when used in this section, shall have the following meanings. Any technical words, terms, or phrases that are not specifically defined in this section shall be construed in a manner consistent with the Texas Code of Construction Act (*Tex. Govt. Code §311.001*).

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Borrowing repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or (B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(5) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(6) Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(7) Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

(8) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(9) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(10) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include an investment authorized by §124.351(a)(1) of the Texas Finance Code.

(11) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(12) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

(13) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's, Moody's, or Fitch which is recognized by the Securities and Exchange Commission

(14) Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Small business-related securities -- is a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)). This definition does not include Small Business Administration securities permissible under section 107(7) of the Federal Credit Union Act.

(18) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(19) Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review and approve the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized to be purchased.

(2) The aggregate limit on the amount that may be invested in any single investment or investment type, set as a percentage of net worth. This requirement does not apply to certificates of deposit or other accounts issued by a financial institution that are fully insured (including accumulated interest) by either the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) The authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and the internal process for assessing the credentials and previous record of the individual or firm.

(5) The risk management framework given the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) The authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Borrowing repurchase transactions. A credit union may enter into a borrowing repurchase transaction, which is a borrowing transaction subject to §123.201 of the Texas Finance Code, provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) investments referred to in subparagraph (A) of this paragraph mature no later than the maturity date of the borrowing repurchase transaction; and

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or investment activity that is authorized under Texas Finance Code §124.351 and this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) U.S. Government-sponsored enterprises. A credit union may invest in obligations of U.S. Government sponsored enterprises such as, for example: the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Farm Credit Bank.

(11) Commercial paper. A credit union may invest in commercial paper issued by a corporation domiciled within the United States and having a short-term or commercial paper rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.

(12) Corporate bonds. A credit union may invest in corporate bonds issued by a corporation domiciled in the United States. The bonds must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of seven years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds rated by a NRSRO in one of the two highest long-term rating categories with remaining maturities of seven years or less.

(14) Mortgage-related securities. With the exception of the residual interest of the mortgage-related security, a credit union may invest in mortgage-related securities backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home. The security must be rated by a NRSRO in one of the two highest long-term rating categories.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities which are rated by a NRSRO in one of the two highest long-term rating categories.

(16) Small business-related securities. A credit union may invest in small business-related securities that represent an interest in one or more promissory notes or leases of personal property evidencing the obligation of a domestic small business concern and originated by a financial institution, insurance company, or similar institution which is regulated and supervised by a Federal or State authority. The securities must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of seven years or less.

(17) Derivative authority. A credit union may enter into certain derivative transactions exclusively for the purpose of decreasing interest rate risk. The transaction is used to manage risk arising from otherwise permissible credit union activities and not entered into for speculative purposes. Permissible derivatives include interest rate swaps, options on swaps, interest rate caps, interest rate floors, and Treasury futures. Derivative authority is restricted to the provisions outlined under Subpart B of Part 703 of the National Credit Union Administration Rules and Regulations.

(d) Documentation. A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule including:

(1) Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held.

(2) Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider. If a credit union is unable to obtain a price quotation required by this subsection for a particular security, then it can compare prices using nominal or option-adjusted spreads, or spreads to TBA (to-be-announced) mortgage backed securities. This requirement to obtain a price quotation does not apply to new issues purchased at par or at original issue discount.

(3) The reference to and use of NRSRO credit ratings in this rules provides a minimum threshold and is not an endorsement of the quality of the ratings. Credit unions must conduct their own independent credit analyses to determine that each security purchased presents an acceptable credit risk, regardless of the rating.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities regulators and securities industry self-regulatory organizations, such as the Financial Industry Regulatory Authority and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, long-term or counterparty ratings that have been assigned by NRSROs, reports of NRSROs, relevant disclosure documents such as annual independent auditor reports, and other sources of financial information.

(3) Paragraphs (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an aggregate amount not to exceed 100% of its net worth at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment

adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

(h) Investment Practice Permitted to Federal Credit Unions.

If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of management of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority.

If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

(A) A copy of the credit union's investment policy;

(B) The higher limit or ratio sought;

(C) An explanation of the need to raise the limit or ratio; and

(D) Documentation supporting the credit union's ability to manage this activity;

(2) In determining action on a waiver request made under this subsection, the commissioner will consider the:

(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

- (B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.
- (C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.
- (D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

INVESTMENT LIMITS AND PROHIBITIONS

C. (c) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.803.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.803. One written comment was received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.803 with certain modifications.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.803 with non-substantive changes to the proposal that was previously published in the *Texas Register*.

The Credit Union Commission (Commission) adopts amendments to Texas Administrative Code Title 7, §91.803 concerning Investment Limits and Prohibitions, with non-substantive changes to the text published in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4292).

As published, the amendments reduce the limitations on investments by exempting federally-insured deposits and investments, to the extent that those amounts are federally insured. The amendments also clarify certain activities in the list of prohibited activities, reduce restrictions on certain activities in the list of prohibited activities, and add certain activities to the list of prohibited activities. As adopted, these ongoing notice requirements have been withdrawn, reverting to the existing rule requirements. The amendments, including some of the non-substantive changes, also correct an erroneous citation and edit the rule for clarity and consistency.

The amendments are adopted as a result of the Credit Union Department's general rule review, which was conducted in accordance with Texas Government Code §2001.039.

The Commission received one written comment on the proposed rule amendments. The commenter was concerned about some technical language differences that might cause some to be concerned about how investments insured or guaranteed by U.S. Government sponsored enterprises would be treated under §91.803(a) and proposed to add the word "sponsored" before the word "enterprise". The Commission agrees with this non-substantive change.

The commenter also suggested adding the language "including those referred to in 91.802(c)(10)" to clarify the term U.S. Government sponsored enterprises. The Commission disagrees that this addition will provide clarity, instead finding that this addition is redundant and unnecessary.

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

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 §§124.351 and 124.352 which address permitted investments and limitations on investments for credit unions.

The specific sections affected by the proposed amended rule are Texas Finance Code, §§124.351 and 124.352.

§91.803. Investment Limits and Prohibitions.

(a) **Limitations.** With the exception of deposits held by a Federal Reserve Bank, a credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation also does not apply to the extent that the investment is insured or guaranteed by the United States government, or an agency, enterprise, corporation, or instrumentality of the United States government, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation.

(b) **Designated Depository.** As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) **Prohibited Activities.**

(1) **Definitions.**

(A) **Adjusted trading--**selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) **Collateralized mortgage obligation (CMO)--**a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) **Commercial mortgage related security--**a mortgage related security except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

(D) **Fair value--**the price at which a security can be bought or sold in a current, arm's length transaction between willing parties, other than in a forced or liquidation sale.

(E) **Real estate mortgage investment conduit (REMIC)--**a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) **Residual interest--**the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(G) **Short sale--**the sale of a security not owned by the seller.

(H) **Stripped mortgage-backed security--**a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities.

(I) **Zero coupon investment--**an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

- (2) A credit union may not:
 - (A) Use financial derivatives for replication, or for any purposes other than hedging;
 - (B) Engage in adjusted trading or short sales;
 - (C) Purchase stripped mortgage backed securities;
 - (D) Purchase residual interests in CMOs/REMICs, or other structured mortgage backed securities;
 - (E) Purchase mortgage servicing rights as an investment but may retain mortgage servicing rights on a loan originated by the credit union and sold on the secondary market;
 - (F) Purchase commercial mortgage related securities of an issuer other than a U.S. Government sponsored enterprise;
 - (G) Purchase any security that has the capability of becoming a first credit loss piece which supports another more senior security;
 - (H) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;
 - (I) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits;
 - (J) Purchase securities used as collateral by a safekeeping concern;
 - (K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in Part 703 of the National Credit Union Administration Rules and Regulations; or
 - (L) Purchase securities convertible into stock at the option of the issuer.
- (d) Investment pilot program.
 - (1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:
 - (A) Board policies approving the activities and establishing limits on them;
 - (B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;
 - (C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;
 - (D) Examples of reports the credit union will generate to monitor the activities;
 - (E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;
 - (F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and
 - (G) The internal control procedures that will be implemented, including audit requirements.
 - (2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice for one or more particular credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be deemed to be engaging in an unsound practice.



Filed via info@tud.texas.gov

August 3, 2015

Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

Re: Comments on Proposed Rules – 91.802 Other Investments and 91.803 Investment Limits and Prohibitions

To Whom It May Concern:

InTouch Credit Union (ITCU) is an \$800 million institution headquartered in Plano, Texas, operates twenty-one branches and two call centers in five states, and serves over 85,000 members residing in all 50 states and 32 foreign countries. On behalf of the Board, staff, and members of ITCU, I appreciate the opportunity to comment on the Texas Credit Union Department's (TCUD) proposed changes of 91.802 Other Investments and 91.803 Investment Limits and Prohibitions.

According to information available on the Department's website, it is suggested comment letters address one or more of the following questions:

- Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?
- Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

From our vantage point, there are some ambiguities that potentially prevent the rules from being understood clearly, and the manner in which the two sections reference each other. Therefore (and in our opinion), some technical language differences between Section 91.802(c)(10) and Section 91.803(a), might cause some to be concerned about how investments insured or guaranteed by U.S. Government sponsored enterprises, for example the Federal National Mortgage Association, would be treated under Section 91.803(a). We suggest the following proposed additional language for Section 91.803(a) be further modified to read: 'the extent that the investment is insured or guaranteed by the United States government or an agency, sponsored enterprise, corporation, or instrumentality of the United States government, including those referred to in 91.802(c)(10) or to any ...'. We believe the additional language should make clear the intent of the proposed change.

In closing, thank you for the opportunity to comment on the proposed regulation. Please feel free to contact us if you would like any additional information.

Sincerely,

Kent L. Lugrand
President & CEO
InTouch Credit Union
ceo@itcu.org
214-291-1776

LOAN PARTICIPATION INVESTMENTS

C. (d) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.805.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.805. No comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.805.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.805 as previously published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code Title 7, §91.805 concerning Loan Participation Investments, with no changes to the text published in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4294).

The amendments clarify permitted participation interests and eliminate the specific limitation on aggregate investment amounts, instead requiring credit unions to develop and follow investment policies and agreements to ensure the soundness of each credit union's loan participation investments.

The amendments are adopted as a result of the Credit Union Department's general rule review, which was conducted in accordance with Texas Government Code §2001.039.

The Commission received no comments on these proposed changes.

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.

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 §124.351 which explains permitted investments for credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

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Subchapter H. Investments

§91.805. Loan Participation Investments.

(a) A credit union may purchase a participation interest in a loan, where the borrower is neither a member of the credit union or a member of another participating credit union, as permitted by §124.351(a)(8) of the Texas Finance Code, provided the following conditions are satisfied:

(1) the purchase complies with all regulatory requirements to the same extent as if the credit union had originated the loan;

(2) the originating lender retains at least 10 percent of the outstanding balance of the loan through the life of the loan;

(3) the purchase complies with the credit union's investment policy, which, at a minimum, must:

(A) establish the same degree of independent credit and collateral analysis as if the credit union was the originator; and

(B) establish commitment limits for aggregate purchased participations, out-of-area participations, and loans originated by individual lead institutions.

(4) the written loan participation agreement fully describes the lead institution's responsibilities, establishes requirements for obtaining timely borrower credit information, addresses remedies upon default, and outlines dispute resolution procedures.

(b) Financial Reporting. A participation interest in a non-credit union member loan purchased under this section shall be reported in accordance with generally accepted accounting principles.

(c) Other Requirements. A credit union purchasing a loan participation investment must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

RESERVE REQUIREMENTS

C. (e) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.901.

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.901. No comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.901.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.901 as previously published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code Title 7, §91.901 concerning Reserve Requirements, with no changes to the text published in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4295).

The amendments provide for the development of a financial plan for credit unions that are unable to increase the dollar amount of their net worth reserves, as required by §91.901(b)(1). The plan would require these credit unions to develop a detailed timetable of steps to increase their net worth ratio and ultimately achieve compliance. The financial plan would be filed with the Department and would be enforceable as a written agreement with the commissioner under §122.255 of the Finance Code.

The amendments are adopted as a result of the Credit Union Department's general rule review, which was conducted in accordance with Texas Government Code §2001.039.

The Commission received no comments on these proposed changes.

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.

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 §124.351 which explains permitted investments for credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

Subchapter I. Reserves and Dividends

§91.901. Reserve Requirements.

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

(1) Net worth means the retained earnings balance of the credit union as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management, the insuring organization, or the commission. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. Net worth does not include the allowance for loan and lease losses account.

(2) Net worth ratio means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(3) Total assets means the average of the total assets as measured using one of the following methods:

(A) average quarterly balance. The average of quarter-end balances of the four most recent calendar quarters; or

(B) average monthly balance. The average of month-end balances over the three calendar months of the calendar quarter; or

(C) average daily balance. The average daily balance over the calendar quarter; or

(D) quarter-end balance. The quarter-end balance of the calendar quarter as reported on the credit union's call report.

(b) In accordance with the requirements of §122.104 of the Act, state-chartered credit unions shall set aside a portion of their current gross income, prior to the declaration or payment of dividends, as follows:

(1) A credit union with a net worth ratio below 7.0% shall increase the dollar amount of its net worth reserves by the following amounts at the indicated intervals until its net worth ratio equals 7.0% of total assets:

(A) in the case of a monthly dividend period, net worth must increase monthly by an amount equivalent to at least 0.0334% of its total assets; and

(B) in the case of a quarterly, semi-annual or annual dividend period, net worth must increase quarterly by an amount equivalent to at least 0.1% per quarter of its total assets.

(2) For a credit union in operation less than ten years and having assets of less than \$10 million, a business plan must be developed that reflects, among other items, net worth projections consistent with the following:

(A) 2.0% net worth ratio by the end of the third year of operation;

(B) 3.5% net worth ratio by the end of the fifth year of operation;

(C) 6.0% net worth ratio by the end of the seventh year of operation; and

(D) 7.0% net worth ratio by the time it reaches \$10 million in total assets or by the end of the tenth year of operation, which ever is shorter.

(3) Whenever the net worth ratio falls below 7.0%, the credit union shall transfer a portion of its current period net income to its regular reserve in such amounts as described in paragraph (1) of this subsection.

(4) Special reserves. In addition to the regular reserve, special reserves to protect the interest of members may be established by board resolution or by order of the commissioner, from current

income or from undivided earnings. In lieu of establishing a special reserve, the commissioner may direct that all or a portion of the undivided earnings and any other reserve fund be restricted. In either case, such directives must be given in writing and state with reasonable specificity the reasons for such directives.

(5) Insuring organization's capital requirements. As applicable, a credit union shall also comply with any and all net worth or capital requirements imposed by an insuring organization as a condition to maintaining insurance on share and deposit accounts. For federally-insured credit unions this includes all prompt corrective action requirements contained within Part 702 of the NCUA Rules and Regulations.

(6) Decrease in Required Reserve Transfer. The commissioner, on a case-by-case basis, and after receipt of a written application, may permit a credit union to transfer an amount that is less than the amount required under paragraph (1) of this subsection. A credit union shall submit such statements and reports as the commissioner may, in his discretion, require in support of a decreased transfer request. The application must be received no later than 10 days before the quarter end and shall include but not be limited to:

(A) An explanation of the need for the reduced transfer amount;

(B) Financial statement reflecting the fiscal impact of the required transfer; and

(C) Documentation supporting the credit union's ability to resume the required transfer at a future date certain.

(7) Financial Plan. A credit union that is not capable of making the prescribed reserve transfer under paragraph (1) of this subsection for three consecutive quarters, shall file a written financial plan detailing a quarterly timetable of steps the credit union will take to increase its net worth ratio and fully comply with this section in the future. A credit union shall file and implement the financial plan within 45 days of the triggering quarter end date. A credit union may, after prior written notice to the Department, amend its financial plan to reflect a change in circumstances. Failure to meet the terms of the financial plan may be considered a violation of a written agreement with the commissioner under §122.255 of the Finance Code.

(c) Revised business plan for new credit unions. A credit union that has been in operation for less than ten years and has assets of less than \$10 million shall file a written revised business plan within 30 calendar days of the date the credit union's net worth ratio has failed to increase consistent with its current business plan. Failure to submit a revised business plan, or submission of a plan not adequate to either increase net worth or increase net worth within a reasonable time; or failure of the credit union to implement its revised business plan, may trigger the regulatory actions described in subsection (b)(4) of this section.

(d) Unsafe practice. Any credit union which has less than a 6.0% net worth ratio may be deemed to be engaged in an unsafe practice pursuant to §122.255 of the Finance Code. The determination may be abated if, the credit union has entered into and is in compliance with a written agreement or order with the department or is in compliance with a net worth restoration or revised business plan approved by the department to increase its net worth ratio. If a credit union has a net worth ratio below 6.0% or is otherwise engaged in an unsafe practice, the department may impose the following administrative sanctions in addition to, or in lieu of, any other authorized supervisory action:

(1) all unencumbered reserves, undivided earnings, and current earnings are encumbered as special reserves;

(2) dividends and interest refunds may not be declared, advertised, or paid without the prior written approval of the commissioner; and

(3) any changes to the credit union's board of directors or senior management staff must receive the prior written approval of the commissioner.

(e) Supervisory action. Notwithstanding any requirements in this section, the department may take enforcement action against a credit union with capital above the minimum requirement if the credit union's circumstances indicate such action would be appropriate.

CREDIT UNION DEVELOPMENT DISTRICTS

C. (f) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed New Subchapter K of 7 TAC Chapter 91.

BACKGROUND: At a special meeting in August, the Commission approved for publication and comment in the *Texas Register* the proposed new Rules 91.2000, 91.2001, 91.2002, 91.2003, 91.2004, 91.2005 and 91.2006. No comments were received in regards to the proposal.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission adopt the proposed new rules.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed new 7 TAC Sections 91.2000, 91.2001, 91.2002, 91.2003, 91.2004, 91.2005 and 91.2006 as previously published in the *Texas Register*.

The Credit Union Commission (Commission) adopts Subchapter K of 7 TAC, Chapter 91, concerning Credit Union Development Districts, with no changes to the text published in the August 28, 2015 issue of the *Texas Register* (40 TexReg 5401).

The subchapter, entitled Credit Union Development Districts, contains seven rules which describe the procedures for establishment of credit union development districts. (A previous version of Subchapter K of 7 TAC, Chapter 91, entitled Residential Mortgage Loan Originators Employed by a Credit Union Subsidiary Organization, was repealed in October 2013 as a result of provisions enacted in the 83rd Session of the Legislature.) The subchapter was proposed in response to House Bill 1626 (HB 1626) enacted by the 84th Legislature. HB 1626 added Chapter 279 to the Texas Finance Code. HB 1626 assigned the Department the duty to administer and monitor a credit union development district program where there is a demonstrated need for services provided by a state or federal credit union, and requires the Commission to adopt rules consistent with this duty not later than January 1, 2016. HB 1626 authorizes a local government to apply for the designation of a credit union development district and authorizes a state or federal credit union to apply to open a branch in a proposed development district at the time the local government submits the application. HB 1626 states that rules regarding the criteria for the designation of credit union development districts must be made in consultation with the Texas Economic Development and Tourism Office (within the Office of the Governor).

91.2000, Purpose and Scope, explains the reason for these rules and clarifies that establishing a credit union development district does not affect requirements applicable to reinvestment zones and tax abatement agreements pursuant to the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Government Code, Chapters 311 and 312, respectively).

91.2001, Definitions, defines the terms "credit union," "district," and "local government."

91.2002, Application Requirements to Establish a District, details the application requirements for local governments seeking to establish a credit union development district in conjunction with a credit union.

91.2003, Submission and Processing of Application, details how an application will be processed and considered complete and acceptable for filing.

91.2004, Criteria for Approval of a District by the Commission, requires the Commission to consider the five, statutorily required factors in HB1626 in determining whether to approve a credit union development district: (1) the location, number, and proximity of sites where services provided by a credit union are available in the proposed credit union development district, (2) consumer needs for services provided by a credit union in the proposed district, (3) the economic viability and local credit needs of the community in the proposed district, (4) the existing commercial development in the proposed district,

and (5) the impact additional services provided by a credit union would have on potential economic development in the proposed district.

91.2005, Monitoring, imposes minimal reporting requirements on the local government applicant in order to permit the Commission to monitor the program as required by HB 1626. The only required notice would inform the Department when a credit union opens or closes a branch in an approved credit union development district.

Finally, 91.2006, Rulemaking and Amendment for this Subchapter, states that the Department will develop policies with the Texas Economic Development and Tourism division of the Governor's Office regarding consultation for the adoption of rules for the designation of credit union development districts.

The Commission received no comments on these proposed rules.

This agency hereby certifies that the proposed rules have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The rules are adopted under newly added Texas Finance Code §279.102, which permits the Commission to adopt rules to implement the creation of credit union development districts and the depositing of public funds in these district depositories with respect to credit union in credit union development districts.

The specific section affected by the proposed rules is Texas Finance Code, §279.102.

DRAFT

Subchapter K. Credit Union Development Districts

§91.2000. Purpose and Scope.

(a) This subchapter implements Tex. Fin. Code §279.001 et seq. regarding the establishment of credit union development districts.

(b) This subchapter does not affect or circumvent requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Tex. Gov. Code, Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement.

§91.2001. Definitions.

Unless the context clearly indicates otherwise, these words and terms, when used in this subchapter, shall have the following meanings:

1. "Credit union" includes state and federal credit unions.
2. "District" means a credit union development district approved under this subchapter.
3. "Local government" means a municipality or county.

§91.2002. Application Requirements to Establish a District.

(a) Basic application. A local government, in conjunction with a credit union, may submit an application to the Commission for the designation of a proposed credit union development district, as provided by §91.2003 of this subchapter (relating to Submission and Processing of Application). The application shall contain the following items to the extent available:

1. the name of the local government, the county in which it is located and evidence of the approval of the application by its governing body;
2. identification of the participating credit union and the location of the proposed credit union or branch by street address;
3. a description of the geographic area comprising the proposed district, including a map indicating the borders of the proposed district;
4. the location, number and proximity of sites where credit union services are available in the proposed credit union development district, including branches of other financial institutions and deposit-taking ATMs other than those located at branches;

5. a compilation and description of consumer needs for credit union services in the proposed district, including population demographics included within the proposed district;
6. a compilation and description of the economic viability and local credit needs of the community in the proposed district, including economic indicators pertinent to the proposed district;
7. a compilation and description of the existing commercial development in the proposed district, including a description of the type and nature of commercial businesses located in the proposed district; and
8. a compilation and description of the impact additional credit union services would have on potential economic development in the proposed district, including significant business developments within the past three years, corporate restructurings, plant closings, other business closings, and recent or proposed business openings or expansions.

(b) Optional information. An application for designation of a credit union development district may also include:

1. a description of other local government and community initiatives proposed to be undertaken and coordinated with establishment of the proposed district;
2. indications of community support or opposition for the application, as evidenced by letters from entities such as local chambers of commerce, local businesses, community-based organizations, non-profit organizations, government officials, or community residents; and
3. such other information that the applicant believes will demonstrate that the proposed district meets the standards set forth in §91.2004 of this subchapter (relating to Criteria for Approval).

§91.2003. Submission and Processing of Application.

(a) The application must be submitted to the Commission in care of the Department, 914 East Anderson Lane, Austin, TX 78752-1699. No filing fee is required.

(b) After the initial application is submitted, the Department shall issue a written notice informing the applicant either that the application is complete and accepted for filing or that the application is deficient and specific additional information is required. The applicant must supply any additional information requested by the Department not later than the 61st day after the date the applicant received written notice from the Department that the application is deficient. Upon a finding of good and sufficient cause, the Department shall grant an applicant additional time to complete the application. Once the deficient application is

complete and accepted for filing, the Department shall issue a written notice informing the applicant that the application is complete and accepted for filing.

(c) After the issuance of written notice informing the applicant that the application is complete and accepted for filing, the Department shall evaluate the application to the extent necessary to make a written recommendation to the Commission under the criteria set forth in §91.2004 of this subchapter. The Department shall submit the completed application and the Department's recommendations to the Commission for decision at the next regularly scheduled meeting of the Commission, which must occur not later than the 120th date after the date the completed application is accepted for filing.

(d) If the Commission approves the application, the Department shall notify the interested parties as required by Tex. Fin. Code §279.105(b).

(e) All approved districts shall be posted on the Department's web site.

§91.2004. Criteria for Approval of a District by the Commission.

In determining whether to approve an application for the designation of a credit union development district, the Commission must consider the criteria listed in Tex. Fin. Code § 279.102(b).

§91.2005. Monitoring.

(a) A local government that receives approval for a district under this subchapter shall notify the Department in writing not later than the 21st day after the date:

1. the credit union establishes a branch in the district and the address of such a branch; and
2. the credit union closes a branch in the district.

(b) On behalf of the Commission, the Department may request periodic status reports from the local government or the credit union in order to ensure that the needs of the community located in the district are being met in an appropriate manner.

§91.2006. Rulemaking and Amendment for this Subchapter.

Tex. Fin. Code §279.102(b) requires the Credit Union Department to adopt rules in consultation with the Texas Economic Development and Tourism Office within the Office of the Governor. The Department will develop policies with this office within the Governor's office, outlining the procedures for consultation.

**POSTING OF CERTAIN CONTRACTS AND ENHANCED CONTRACT
AND PERFORMANCE MONITORING**

C. (g) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed New 7 TAC Section 97.206.

BACKGROUND: At a special meeting in August, the Commission approved for publication and comment in the *Texas Register* the proposed new Rule 97.206. No comments were received in regards to the proposal.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission adopt the proposed new rule.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed new 7 TAC Section 97.206 as previously published in the *Texas Register*.

The Credit Union Commission (Commission) adopts new §97.206, Title 7, Texas Administrative Code, entitled Posting Of Certain Contracts: Enhanced Contract And Performance Monitoring, which implements procedures for contracts for the purchase of goods or services from private vendors, with no changes to the text published in the August 28, 2015 issue of the *Texas Register* (40 TexReg 5403).

The new rule was proposed in response to Senate Bill 20 (SB 20) enacted by the 84th Legislature. SB 20 requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements.

The Commission received no comments on this proposed rule.

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.

The rule is adopted under Texas Government Code §2261.253, which requires the Commission to adopt and enforce rules providing for the Commissioner, Credit Union Department, to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The specific sections affected by the proposed new rule is Texas Government Code, §2261.253.

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§97.206. Posting Of Certain Contracts: Enhanced Contracts And Performance Monitoring.

(a) Pursuant to section 2261.253 of the Texas Government Code, the Department will implement the following procedures for contracts for the purchase of goods or services from private vendors:

(1) The Department will list information pertaining to its contract with private vendors on its website. The information will include:

(A) The name of the vendor with whom the contract is made;

(B) A description of the competitive bidding process for the contract, or, if the contract did not involve competitive bidding, a citation and explanation of the legal authority supporting exemption from the competitive bidding process;

(C) A link to a copy of the request for proposal for the contract, if applicable until the contract expires or is completed; and

(D) A link to a copy of the contract with the vendor until the contract expires or is completed.

(2) Enhanced contract or performance monitoring procedure until the contract expires or is completed.

(A) For each contract whose value is greater than \$25,000, the Commissioner and the Department Procurement Director will evaluate whether enhanced contract or performance monitoring is appropriate. Criteria that may be considered include:

(i) Total cost of the contract.

(ii) Risk of loss to the Department under the contract.

(iii) Department resources available for enhanced contract or performance monitoring.

(B) After evaluation of the contract, the Commissioner will immediately report to the Commission Members:

(i) The basis for determination as to whether enhanced contract or performance monitoring is appropriate;

(ii) Include any serious issues or risks identified with the contract, if applicable; and

(iii) If enhanced contract or performance monitoring is appropriate, the Department's plan for carrying out the enhanced contract or performance monitoring.

(C) Commission members may agree to convene a special commission meeting for the purposes of discussion or deciding upon matters related to enhanced contract or performance monitoring of Department contracts. This meeting would be conducted in conformity with the Texas Open Meetings Act.

(b) This rule applies only to contracts for which the request for bids or proposals is made public on or after September 1, 2015; or, if the contract is exempt from

competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memorandums of understanding, interagency contracts, interlocal agreements or contracts that do not involve a cost to the Department.

D

NEW BUSINESS

The Committee will discuss and possibly vote on potential recommendations to the Credit Union Commission concerning the following items:

- a. Readopt 7 TAC Part 6, Chapter 91, Subchapter O (relating to Trust Powers) in its entirety.
- b. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations.
- c. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.301 Concerning Field of Membership.

RECOMMENDED ACTION: The Department requests that the Committee take action as indicated on the documents contained on **Tab D**.

MANDATORY RULE REVIEW

D. (a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Part 6, Chapter 91, Subchapter O (Relating to Trust Powers) in its Entirety.

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for readoption 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 has reviewed 7 TAC Part 6, Chapter 91, Subchapter O and is recommending that no changes be made to 7 TAC Sections 91.6001, 91.6002, 91.6003, 91.6004, 91.6005, 91.6006, 91.6007, 91.6008, 91.6009, 91.6010, 91.6011, 91.6012, 91.6013, 91.6014, and 91.6015.

Notice of review and a request for comments on the rules in this chapter was published in the August 21, 2015 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rules continue to exist.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission readopt the noted rules.

RECOMMENDED MOTION: I move that we recommend that the Commission find that the reasons for adopting 7 TAC Sections 91.6001, 91.6002, 91.6003, 91.6004, 91.6005, 91.6006, 91.6007, 91.6008, 91.6009, 91.6010, 91.6011, 91.6012, 91.6013, 91.6014, and 91.6015 continue to exist and that the rules be readopted without change.

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, §§91.6001 (Fiduciary Duties), 91.6002 (Fiduciary Capacities), 91.6003 (Notice Requirements), 91.6004 (Exercise of Fiduciary Powers), 91.6005 (Exemption from Notice), 91.6006 (Policies and Procedures), 91.6007 (Review of Fiduciary Accounts), 91.6008 (Recordkeeping), 91.6009 (Audit), 91.6010 (Custody of Fiduciary Assets), 91.6011 (Trust Funds), 91.6012 (Compensation, Gifts, and Bequests), 91.6013 (Bond Coverage), 91.6014 (Errors and Omissions Insurance), and 91.6015 (Litigation File), as published in the August 21, 2015 issue of the *Texas Register* (40 TexReg 5353). The Commission proposes to readopt these rules.

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

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.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.6001, 91.6002, 91.6003, 91.6004, 91.6005, 91.6006, 91.6007, 91.6008, 91.6009, 91.6010, 91.6011, 91.6012, 91.6013, 91.6014, and 91.6015 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

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Subchapter O. Trust Powers

§91.6001. Fiduciary Duties.

A credit union must conduct its trust operations in accordance with applicable law, and must exercise its fiduciary powers in a safe and sound manner. All fiduciary activities shall be under the direction of the credit union's board of directors. In carrying out its responsibilities, the board may assign, by action duly entered in the minutes, any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

§91.6002. Fiduciary Capacities.

A credit union is subject to this chapter if it acts in a fiduciary capacity. A credit union acts in a fiduciary capacity when it acts in any of the following capacities:

- (1) Trustee.
- (2) Custodian.
- (3) Executor.
- (4) Administrator.
- (5) Guardian.
- (6) Receiver.

§91.6003. Notice Requirements.

(a) Intent. A credit union is required to notify the commissioner in writing of its intent to exercise fiduciary powers, at least 31 days prior to the anticipated commencement date of such fiduciary activities. The notice must contain:

- (1) A statement describing the fiduciary powers that the credit union will exercise;
- (2) An opinion of counsel that the proposed activities do not violate law, including citations to applicable law;
- (3) A statement that the capital of the credit union is not less than the capital required by law of other financial institutions exercising comparable fiduciary powers;
- (4) Sufficient biographical information on proposed trust management personnel to enable the Department to assess their qualifications; and
- (5) A description of the locations where the credit union will conduct fiduciary activities.

(b) Prior Activity. A credit union that has initiated trust activities prior to the effective date of this rule shall file the notice prescribed in subsection (a) by October 1, 2003.

§91.6004. Exercise of Fiduciary Powers.

(a) Supervisory Review. Unless otherwise notified by the department, a credit union may exercise its fiduciary powers on the 30th day after the credit union receives written confirmation from the Department that the notice required under Section 91.6003 of this title (relating to Notice Requirements) is complete and accepted for filing. The Department will consider the following factors when reviewing such a notice:

- (1) The credit union's financial condition.
- (2) The credit union's capital and whether that capital is sufficient under the circumstances.
- (3) The credit union's overall performance.
- (4) The fiduciary powers the credit union proposes to exercise.
- (5) The availability of legal counsel.

- (6) The experience and expertise of proposed trust management personnel.
 - (7) The needs of the members to be served.
 - (8) Any other facts or circumstances that the Department considers appropriate.
- (b) **Written Notice.** Prior to expiration of the 30 day period referred to in subsection (a), the commissioner may give the credit union written notice of denial or consent, subject to certain conditions.
- (c) **Acceptance of Conditions.** Commencement of the exercise of fiduciary powers constitutes confirmation of acceptance of all conditions imposed by the commissioner under subsection (b) and shall be considered an enforceable agreement against the credit union for all purposes.

§91.6005. Exemption from Notice.

A credit union does not need to provide notice under section 91.6003 (relating to notice requirements) to act as a trustee or custodian of any form of retirement, pension, profit sharing or deferred income accounts for its members, pension funds of self-employed individuals eligible for membership and pension funds of a company or organization whose employees are eligible for membership in the credit union if acting as such will only involve holding the funds on deposit and reporting information to the account holders and government agencies. All contributions to such fiduciary accounts, however, must be initially made to a share or deposit account in the credit union and the credit union may not directly or indirectly provide any investment advice for such fiduciary accounts.

§91.6006. Policies and Procedures.

A credit union exercising trust powers shall adopt and follow written policies and procedures adequate to maintain its fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the credit union's:

- (1) Brokerage placement practices;
- (2) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;
- (3) Methods for preventing self-dealing and conflicts of interest;
- (4) Selection and retention of legal counsel who is readily available to timely review trust instruments or other documents creating the credit union's fiduciary status and advise the credit union and its fiduciary officers and employees on all fiduciary related matters; and
- (5) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

§91.6007. Review of Fiduciary Accounts.

- (a) **Pre-acceptance review.** Before accepting a fiduciary account, a credit union shall review the prospective account and related instruments and documents to determine whether it can properly administer the account.
- (b) **Initial post-acceptance review.** Upon the acceptance of a fiduciary account for which a credit union has investment discretion, the credit union shall conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.
- (c) **Annual review.** At least once during every calendar year, a credit union shall conduct a review of all assets of each fiduciary account for which the credit union has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

§91.6008. Recordkeeping.

A credit union shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts. All records pertaining to a fiduciary account shall be separate and distinct from other records of the credit union.

§91.6009. Audit.

At least once during each calendar year, a credit union shall arrange for a suitable audit by a certified public accountant in accordance with generally accepted standards for attestation engagement. The audit must ascertain whether the credit union's internal control policies and procedures provide reasonable assurance of three things:

- (1) The credit union is administering fiduciary activities in accordance with applicable law and the trust instrument or other documents creating the fiduciary responsibility;
- (2) The credit union is properly safeguarding fiduciary assets; and
- (3) The credit union is accurately recording transactions in appropriate accounts in a timely manner.

§91.6010. Custody of Fiduciary Assets.

(a) A credit union shall place assets of fiduciary accounts in the joint custody or control of not fewer than two the fiduciary officers or employees designated for that purpose by the board of directors.

(b) A credit union shall keep assets of fiduciary accounts separate from the assets of the credit union. Except as otherwise authorized by applicable law and as may be in the best interests of the beneficiaries of the fiduciary account, a credit union shall keep assets of each fiduciary account separate from all other accounts.

§91.6011. Trust Funds.

All monies received by a credit union as fiduciary on trust business shall be deposited in a specially designated account or accounts, shall not be commingled with any funds of the credit union and shall remain on deposit until disbursed or invested in accordance with powers and duties of the credit union in its capacity as such fiduciary.

§91.6012. Compensation, Gifts, and Bequests.

A credit union may not permit its directors, officers, or employees to retain any compensation for acting as co-fiduciary with the credit union in the administration of a fiduciary account, except with the specific approval of the board of directors. In addition, a credit union may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the director, officer, or employee or is specifically approved by the board of directors.

§91.6013. Bond Coverage.

A credit union is required to maintain a bond for protection and indemnity of members, in reasonable amounts against dishonesty, fraud, defalcation, forgery, theft, embezzlement, and other similar insurable losses with an insurance or surety company authorized to do business in this state. Coverage against such losses shall include all agents who do not otherwise provide

protection and indemnity for the credit union, directors, officers, and employees of the credit union acting independently or in collusion or combination with any person or persons whether or not they draw salary or compensation.

§91.6014. Errors and Omissions Insurance.

The credit union shall procure errors and omission insurance of at least five hundred thousand dollars.

§91.6015. Litigation File.

A credit union shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

INVESTMENT LIMITS AND PROHIBITIONS

D. (b) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations.

BACKGROUND: As part of the Department's monitoring and review of the functioning of Rule 91.301, it has become clear that the existing definitions in 7 TAC Section 91.101 and the existing provisions of 7 TAC Section 91.301 have inadvertently created an unguarded backdoor to credit union membership that allows credit unions to avoid the implicit proximity link of the group to the credit union's office(s). Some credit unions have partnered with groups, with an associational community of interest, and used those groups to qualify individuals, who otherwise are ineligible, for credit union membership. In fact, it appears that this type of associational membership has facilitated the establishment of indirect automobile lending programs at a number of credit unions. When an individual is allowed to join an association and the credit union simultaneously, there seems to be little evidence to corroborate that the individual truly supports the goals and mission of the association, and is not solely joining the association to be eligible for membership in the credit union. This is further exacerbated when a credit union simply enrolls an individual into an association without the individual's knowledge or consent. If a credit union, or its agent, enrolls an individual who does not knowingly and voluntarily join the association, the individual's support of the association's goals and mission is, at best, suspect and one could probably infer that a meaningful affinity or commonality of interest does not exist.

The Department is encouraging the Committee to consider a number of modifications to the definition of community of interest. More specifically, the proposal would revise and update certain characteristics used to determine if a unifying factor among a group of persons satisfies the requirements and qualifies for inclusion in a credit union's field of membership. It is the intention that the absence of characteristics would be determinative. The proposal would also help ensure credit union compliance with membership requirements. Additionally, the proposal would clarify that only a credit union owned, deposit-taking ATM is included in the definition of office.

Staff believes that the proposal would result in more objective applications of the standards, less difficulty for credit unions, and more efficient use of agency recourses.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.101 concerning definitions and interpretations.

The Credit Union Commission (the Commission) proposes amendments to §91.101 concerning Definitions and Interpretations. The amendments revise and update certain characteristics used to determine if a unifying factor among a group of persons satisfies the requirements and qualifies for inclusion in a credit union's field of membership. The absence of a characteristic is determinative. The modification will help ensure credit union compliance with membership requirements. Additionally, the proposal clarifies that only a credit union owned, deposit-taking ATM is included in the definition of "office".

The amendments proposed will result in more objective applications of the standards, less difficulty for credit unions, and more efficient use of agency recourses.

The amendments are proposed as a result of the Department's general rule review.

Shari Shivers, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Shivers has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Shari Shivers, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed 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.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402.

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Catastrophic act—any natural or man-made disaster such as a flood, tornado, earthquake, major fire or other disaster resulting in physical destruction or damage.

(8) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) **Associational--based on commonality of interest related to membership in a recognized organization or a portion of such a group. The organization must satisfy each of the following criteria:**

(i) the organization's primary purpose must be other than providing eligibility for credit union services. For purposes of this subparagraph, the practice of a credit union enrolling an individual in an association without that person's knowledge or consent is presumed to be the equivalent of providing eligibility for credit union services;

(ii) The organization's membership must be primarily composed of natural persons;

(iii) The organization's organizational documents clearly define membership eligibility and it may not be based primarily on a client or customer relationship; and

(iv) The organization observes the formalities of corporate separateness from the credit union.

With respect to an associational group within a credit union's field of membership, a credit union may admit to membership:

(i) Employees of the enterprise;

(ii) Directors, employees, volunteers, and retirees of the enterprise or its subsidiaries or affiliates;

(iii) Natural persons under contract to work for the enterprise, or its subsidiaries or affiliates;

(iv) Family members (as determined by the credit union) of any of the above-described natural persons;

(v) The enterprise and its subsidiaries and affiliates; and

(vi) Other persons approved by the commissioner.

~~Occupational—based on an employee relationship that may be established by:~~

~~(i) — employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;~~

~~(ii) — employment or attendance at a school; or~~

~~(iii) — employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.~~

(B) Occupational--based on an commonality of interest related to employment by, work for, an enterprise, or employment within a specific trade, industry or profession (TIP) with a close nexus and narrow attributes. A geographic limitation is not a requirement for an occupational community of interest; however, for purposes of describing the field of membership, the geographic areas being served may be included. With respect to an occupational group within a credit union's field of membership, a credit union may admit to membership:

(i) Employees of the enterprise;

(ii) Directors, employees, volunteers, and retirees of the enterprise or its subsidiaries or affiliates;

(iii) Natural persons under contract to work for the enterprise, or its subsidiaries or affiliates;

(iv) Family members (as determined by the credit union) of any of the above-described natural persons;

(v) The enterprise and its subsidiaries and affiliates; and

(vi) Other persons approved by the commissioner.

~~(B) Associational—based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:~~

~~(i) — whether the members pay dues,~~

~~(ii) — whether the members participate in furtherance of the goals of the association,~~

~~(iii) — whether the members have voting rights,~~

~~(iv) — whether there is a membership list,~~

~~(v) — whether the association sponsors activities,~~

~~(vi) — what the association's membership eligibility requirements are, and~~

~~(vii) — the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.~~

(C) Geographic--based on a clearly defined and specific geographic boundaries. Geographic boundaries may include a city, county (single, multiple, or portions of a county) or their political equivalent, school districts, or a clearly identifiable neighborhood area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. The Department recognizes four types of affinity on which a geographic community of interest can be based—persons who live in, worship in, attend school in, or work in the geographic area. Businesses and other legal entities with the geographic boundaries may also qualify for membership are

~~currently four types of affinity on which a geographic community of interest can be based:~~
~~persons, who~~

- ~~(i) — live in,~~
- ~~(ii) — worship in,~~
- ~~(iii) — attend school in, or~~
- ~~(iv) — work in that community.~~

The geographic community of interest requirement is met if the area to be served is in a recognized single political jurisdiction, e.g., a city, ~~or a~~ county, or **their political equivalent, or any contiguous** a portion thereof.

Some examples of insufficiently defined or unacceptable geographic communities of interest are:

- (i) Persons who live or work within, and business located within, a ten-mile radius of a credit union office;**
- (ii) Persons who live or work in the greater Houston area; or**
- (iii) Persons who live or work in the State of Texas;**

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(9) Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income-producing property or convert the use of income-producing property to a different or expanded use from its former use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income-producing property that do not change its use.

(10) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(11) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(12) Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(13) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(14) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(15) Improved residential property--real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

(16) Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(17) Loan-to-value ratio--the aggregate amount of all sums borrowed including 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.

(18) Loan and extension of credit--a direct or indirect advance of funds to a member, or on that member's behalf, that is conditioned upon the repayment of the funds by the member or the application of collateral. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(19) Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and acting in their own best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U. S. Office of Management and Budget.

(22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned **deposit-taking** ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements; however, it does not include the credit

union's Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) Principal office--the home office of a credit union.

(28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(29) Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(32) Resident of this state--a person physically located in, living in or employed in the state of Texas.

(33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(34) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(35) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code [(TAC)], Banking and Securities, which contains all of the department's rules.

(38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(39) Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(40) Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

DRAFT

FIELD OF MEMBERSHIP

D. (c) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.301 Concerning Field of Membership.

BACKGROUND: Over the past four years, the Department has continued to monitor and review the functioning of Rule 91.301 in an effort to improve consistency and provide a basis, if necessary, for further clarification and modification. In response to this continued oversight, and requests from credit unions, staff has identified issues that need clarification or update and are the basis for this proposal.

Finance Code Section 15.402 provides the Commission with the authority to adopt rules it determines are appropriate and necessary to accomplish the purpose of the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D), including the character of the field of membership. In adopting any such rules, the Legislature has directed the Commission to consider the need to:

1. Promote a stable credit union environment;
2. Provide credit union members with convenient, safe, and competitive services;
3. Preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and
4. Promote or encourage economic development in this state.

The Legislature, in enacting Finance Code Section 122.051, has limited credit union membership to persons who share a definable “community of interest”. Although the Legislature has not defined the term, it has been presumed, over the years, that community of interest is a definable group of people present who have something in common; who are bonded together in some positive form. The Legislature has stipulated that, among other things, a community of interest can be based on occupation, association, or residence. The Commission has further interpreted that a credit union’s field of membership may include a “mosaic of communities of interest”. More specifically, a credit union may serve a combination of distinct, definable single communities of interest.

Historically, the ability to include a group of persons in a credit union’s field of membership has been implicitly linked to proximity of the group to

the credit union's office(s). Given the electronic and digital age we now live in, it seems reasonable for the Commission to consider revising or expanding its interpretation of "proximity", which was broached during a time when member transactions had to take place in a physical office and the credit union members had fewer and slower transportation options available to them. For the most part, today's credit unions are able to serve members through wide-ranging and remote service channels, including ATMs, online banking, mobile banking, shared service centers, indirect financing partnerships, credit and debit cards, video teller terminals, and 24-hour call centers. Based on these technological advancements, the importance of geography, location and physical branches may have diminished somewhat. As a result, the premise that the convenience and needs of a group cannot be well-served (or even better-served) by a credit union that does not have a physical location within close proximity may be antiquated and may ultimately serve to curb innovation.

As the Industry continues to transition from being primarily an occupational/associational based membership to a more residence- or geographic-based membership, the obligation to help meet the financial needs of all persons within their fields of membership has not vanished. In fact, those duties and responsibilities increase as the geographic area being served grows larger. As credit unions continue expand to even larger geographic areas, consideration should be given to the correlation between far-flung memberships and the burden of administration in providing service to those far-flung memberships. As one increases, so must the other. In other words, from a public policy perspective, credit unions need to be prepared to serve all segments of the population in a geographic area included in its field of membership. An overall strategy that primarily targets one segment, or select segments, of a geographic area, to the exclusion of others, should not be an acceptable practice. A credit union wishing to expand geographically should be able to demonstrate its willingness and ability to not only serve, but also to market to, a more diverse membership base yet still be held accountable for its plans in that regard.

The Department is encouraging the Committee to consider a number of changes to the field of membership rule. More specifically, the proposal presented would expand the local service area requirement to a newly delineated market area with certain limitations. The proposal would also add a direct marketing restriction. Additionally, to encourage further growth of credit union services in underserved areas, the proposal would delete the restrictions for underserved communities by granting the

Department a more permissive waiver provision and also makes changes necessary to include the provisions of Subchapter K, related to Credit Union Development Districts. Further, the proposal would change and streamline the notice requirements. Finally, the proposal would place certain affirmative obligations on a credit union who submits an application to expand their field of membership geographically.

The Department's intent in seeking approval to publish this Proposal is to stimulate discussion and engage interested persons in helping to develop appropriate provisions that fulfill public policy considerations and modernize the field of membership rule. It is not the intent to force the adoption of the proposed amendments without collaborating with all interested parties to attempt to find consensus on any issue. With respect to the Industry, the Department currently has a series of meetings scheduled, around the State, to inform credit unions of the proposal, solicit input, and encourage participation in this process.

Modernization of the field of membership rule could provide credit unions with new opportunities to provide financial services to more Texans and ensure that the Texas chartered remains strong and viable. Of course, whether to address any or all of the provisions in the proposal is a public policy decision for the Commission but staff looks forward to the dialogue with the Industry and the Commission Members.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.301 concerning field of membership.

The Credit Union Commission (the Commission) proposes amendments to §91.301 concerning Field of Membership. The proposed amendments to §91.301 make changes to reflect that a credit union's field of membership may include a mosaic of communities of interest. More specifically, the amendments expand the local service area requirement to a newly delineated market area with certain limitations. The amendments eliminate many existing restrictions imposed by the Commissioner. The amendments also add a direct marketing restriction. Additionally, the amendments delete the restrictions for underserved communities by granting the Department a more permissive waiver provision and makes amendments necessary to include the provisions of Subchapter K, related to Credit Union Development Districts. The amendments change and streamline the notice requirements. Finally, the rule places certain affirmative obligations on a credit union who presents an application to expand their field of membership.

The amendments are proposed as a result of the Department's general rule review.

The amendments proposed allow more flexibility to credit unions for determining a community of interest and will result in reduced regulatory burden for credit unions.

Shari Shivers, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Shivers has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Shari Shivers, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed 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 §122.051, concerning membership.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.051.

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has its own community of interest and is within the credit union's **market local service** area. ~~In this section, local service area shall mean an area that is within reasonable proximity of a credit union's office, and allows members to be realistically served from that office.~~ For purposes of field of membership, the Group as a whole will be considered to be within the **credit union's market local service** area when:

(1) A majority of the persons in the Group live, work, or gather regularly within the **market local service** area;

(2) The Group's **corporate** headquarters is located within the **market local service** area; or

(3) The persons in the Group are "paid from" or "supervised from" an office or facility located within the **market local service** area.

The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing to serve a larger group or there are other operational or management concerns.

(b) **Delineation of market area. A credit union shall delineate its market area in the bylaws. A credit union whose field of membership does not include any geographic communities of interest, may delineate its membership bylaw provisions as its market area.**

(1) **Market area. The market area for a credit union shall consist generally of one or more MSA's or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities, or towns in which the credit union has its principal place of business, offices, and deposit-taking ATMs.**

(2) **Limitations on market area. Each credit union's market area(s):**

(A) Must consist only of whole metropolitan areas or political subdivisions;

(B) Must be of reasonable geographic size, taking into account the credit union's size, financial condition, and location of its offices and deposit-taking ATMs; and

(C) May not reflect illegal discrimination ~~Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:~~

~~(1) members of the family or household of a member of the Group;~~

~~(2) volunteers performing services for or on behalf of the Group;~~

~~(3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;~~

~~(4) spouses of persons who died while in the Group;~~

~~(5) employees of the credit union;~~

~~(6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.~~

(c) Multiple-groups.

(1) The commissioner may approve a credit union's original articles of incorporation and bylaws or a request for approval of an amendment to a credit union's bylaws to serve one or more communities of interest or a combination of types of communities of interest.

(2) In addition to general requirements, special requirements pertaining to multiple-Group applications may be required before the commissioner will grant such a certificate or approve such an amendment.

(A) Each Group to be included in the proposed field of membership of the credit union must have its own community of interest.

(B) Each associational or occupational Group must individually request inclusion in the proposed credit union's field of membership.

(d) **Direct marketing restriction. A credit union with a geographic community of interest may not direct marketing targeted primarily at the persons in an occupational or associational Group unless:**

(1) the Group was included in the bylaws of the credit union prior to October 31, 2015. An occupational or associational Group is "included" in the bylaws of a credit union if the underlying enterprise or organization, as applicable, is specifically named in the credit unions bylaws.

(2) a management official of the underlying enterprise or organization has provided the credit union with a written statement, signed by the official, that the Group desires service by the credit union. Overlap protection.

~~(1) The commissioner will only consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap for a Group of 3,000 members or more.~~

~~(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility,~~

~~complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.~~

~~(3) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." Exclusionary clauses are rarely appropriate for inclusion on a geographic community of interest.~~

~~(4) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:~~

~~(A) whether the overlap is incidental in nature, ie., the group(s) in question is so small as to have no material effect on the overlapped credit union;~~

~~(B) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;~~

~~(C) whether the overlapped credit union provides requested service;~~

~~(D) the financial effect on the overlapped credit union;~~

~~(E) the desires of the group(s); and~~

~~(F) the best interests of the affected group(s) and the credit union members involved.~~

~~(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where~~

~~acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.~~

~~(6) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.~~

(e) Underserved communities.

(1) The Department may waive any provision of this section as the commissioner deems appropriate to facilitate credit union service to low and moderate income persons

~~(1) All credit unions may include underserved areas in their fields of membership, without regard to location. More than one credit union can serve the same underserved area.~~

~~(2) Once an underserved area has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the community. For the purposes of this subsection, service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loan proceeds are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, and an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or a credit union's Internet website.~~

~~(3) A credit union desiring to add an underserved area must document that the community meets the definition. In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved area.~~

(2) A credit union may extend membership to persons and organizations in an underserved community where such area has been designated a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts).

(f) Parity with Federal Credit Unions.

Credit unions will be allowed to have, at a minimum, at least as much flexibility as federal credit unions have in field of membership regulation. If a credit union proposes a type of Group that the National Credit Union Administration has previously determined meets the Federal requirements, the commissioner shall approve the application unless the commissioner finds that the credit union has not demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership.

(g) Application **to expand field of membership.**

(1) In order to request the approval of the commissioner to add a Group to its **field of membership** bylaws, a credit union must submit a written application to the Department. The applicant credit union shall have the burden to show to the Department such facts and data that support the requirements and considerations in this rule. In reviewing such application, the commissioner shall consider:

(A) ~~(1)~~ Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;

(B) ~~(2)~~ The ability of credit unions to maintain parity and to compete fairly with their counterparts;

(C) (3) Service by the credit union that is responsive to the convenience and needs of prospective members;

(D) (4) Protection for the interest of current and future members of the credit union; and

(E) (5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.

(2) Notice published in accordance with Section 91.104 (relating to Public Notice and Comment on Certain Applications) is deemed sufficient notification to all credit unions that the applicant credit union has submitted a request to expand its field of membership and comments on the proposed expansion are being accepted.

(h) Plan to Serve Geographic Community of Interest.

(1) A credit union must develop a business plan specifying how it will serve a proposed geographic community of interest. The business plan, at a minimum, must identify the credit and depository needs of the geographic area and detail how the credit union plans to serve those needs. The board of directors should periodically evaluate the credit union's record of helping to meet the credit needs of a geographic area(s) included in its field of membership. The commissioner may require a service status report from a credit union before allowing the credit union to expand its field of membership to include another geographic community of interests or change its market area.

(2) A credit union has a continuing and affirmative obligation to help meet the financial needs of a geographic community of interest. This obligation, however, does not require a credit union to make loans or to provide services that are inconsistent with safe and sound operations.

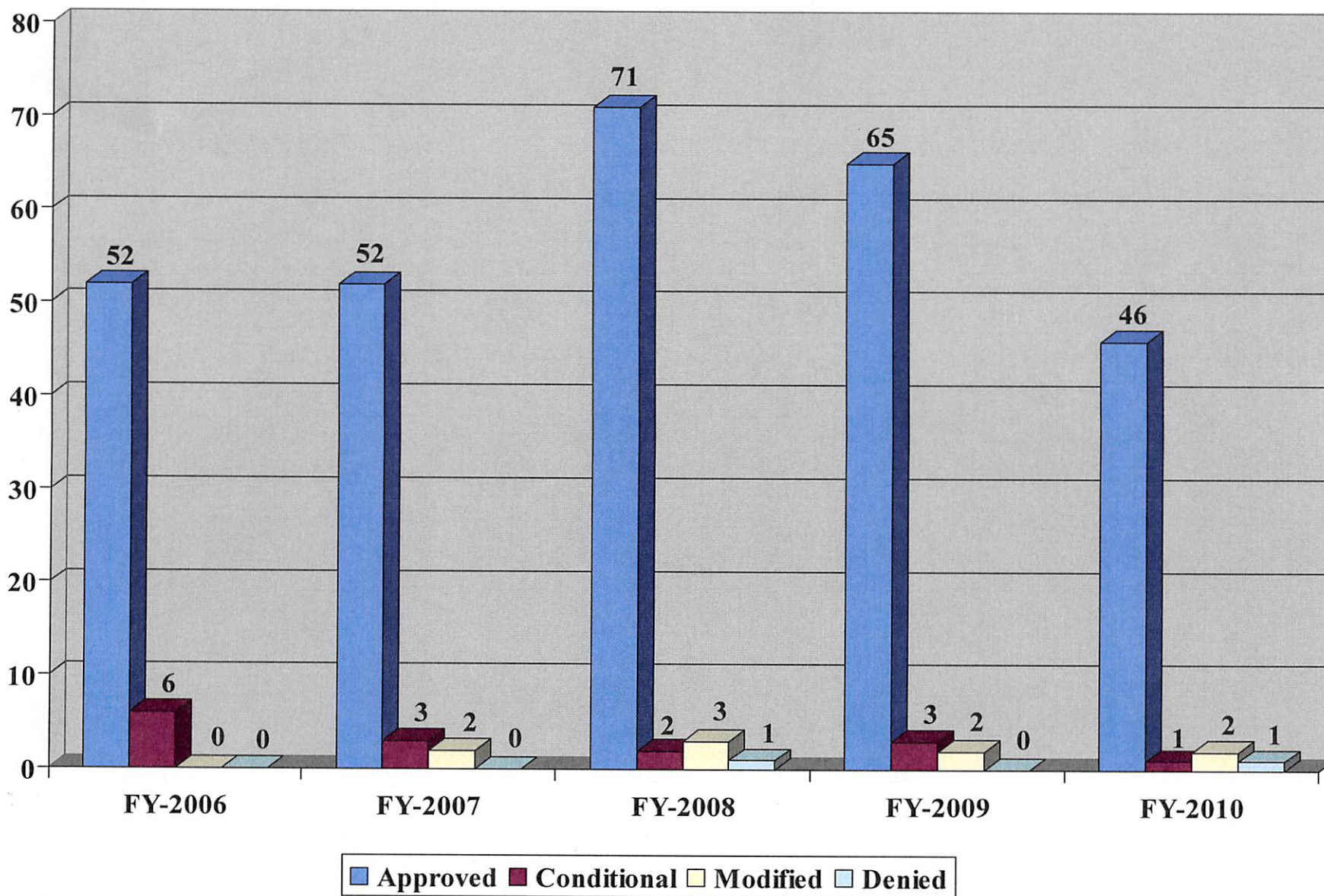
(i) Applicability of this section.

(1) This section also applies to the conversion of a foreign or federal credit union to a credit union chartered and operating under Texas Finance Code, Title 3, Subtitle D.

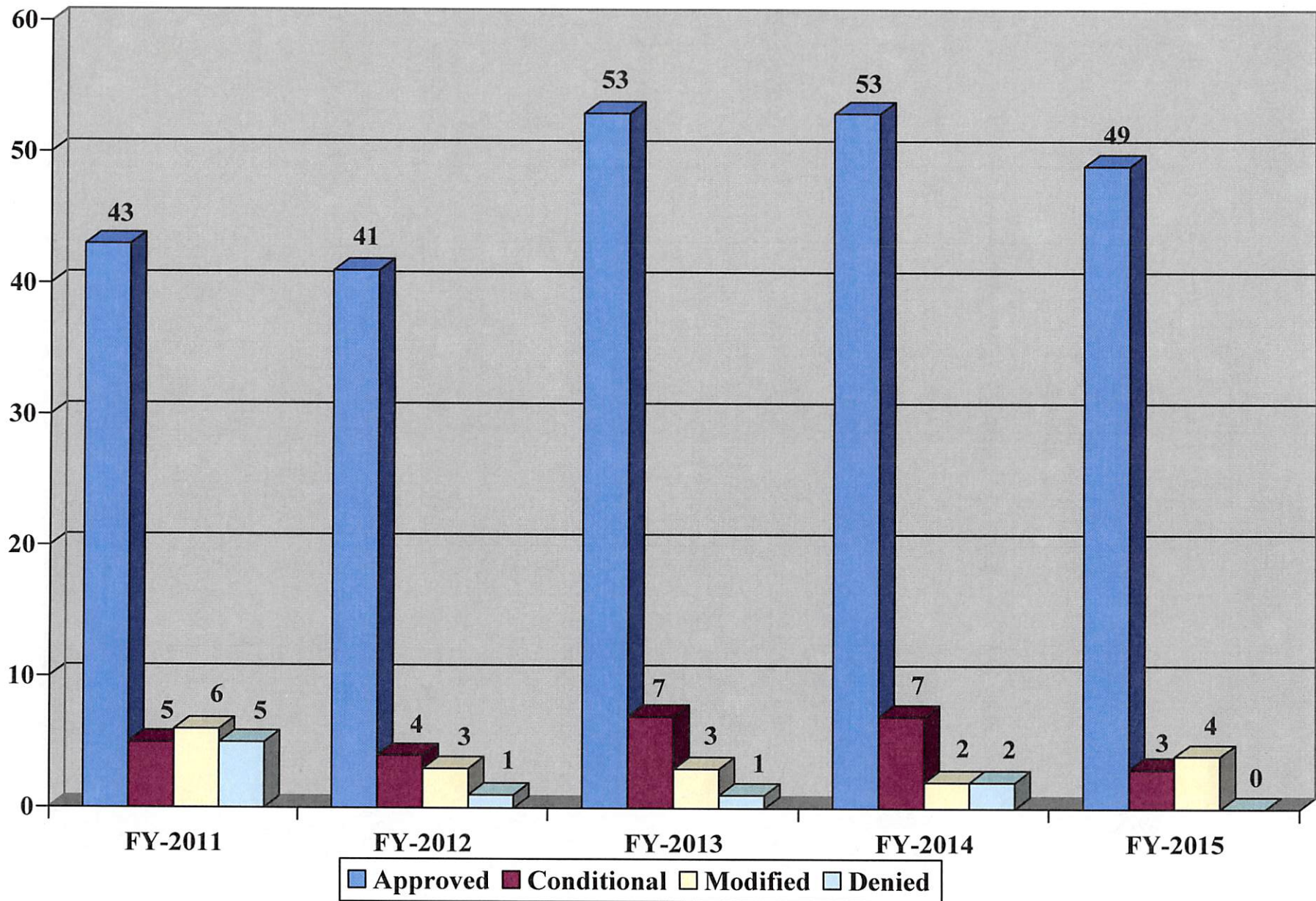
(2) This section does not apply to mergers where the continuing credit union is organized and operating under Texas Finance Code, Title 3, Subtitle D. The continuing credit union may amend its bylaws to add the field of membership of the merging credit union.


(3) This section does not restrict Groups added to a credit union's bylaws prior to October 31, 2015.

Field of Membership Applications FY-2006 – FY-2010



Field of Membership Applications FY-2011 – FY-2015






Alabama

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Alaska

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?




Arizona

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




California

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Colorado

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Connecticut

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

Florida



Community FOM

Geographic FOM


Statewide FOM

Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

Georgia



Community FOM

Geographic FOM

Statewide FOM

Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?



Community FOM

Geographic FOM

Statewide FOM

Combination association
and community FOM

YES Do you allow multiple
communities in a credit
union's FOM?

NO Do any credit unions in your
state have statewide FOMs?



Community FOM

Geographic FOM

Statewide FOM

Combination association
and community FOM

YES Do you allow multiple
communities in a credit
union's FOM?

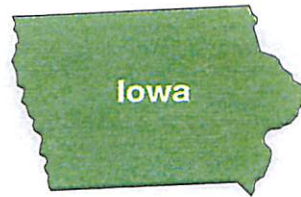
NO Do any credit unions in your
state have statewide FOMs?



- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

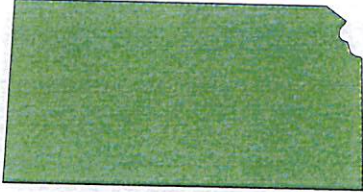
YES Do any credit unions in your state have statewide FOMs?



- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

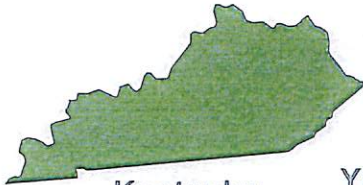


Kansas

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Kentucky

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

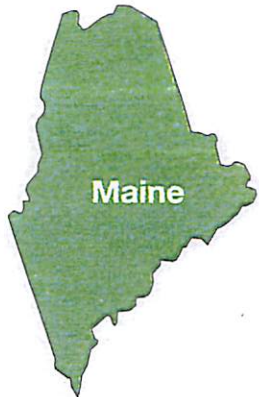


Louisiana

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Maine

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Maryland

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Massachusetts

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Michigan

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?




Minnesota

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Mississippi

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

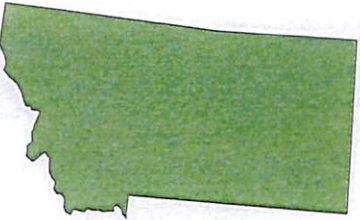


Missouri

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Montana

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

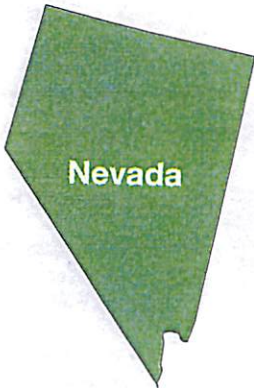


Nebraska

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

NO Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Nevada

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




New Hampshire

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?




New Jersey

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




New Mexico

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?



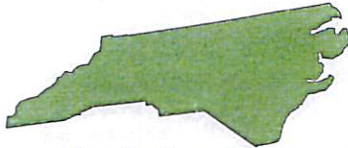
New York

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

Source: New York Credit Union Association

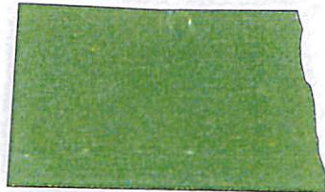


North Carolina

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?



North Dakota

- Community FOM
- Geographic FOM

Statewide FOM

Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?




Ohio

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM


YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?



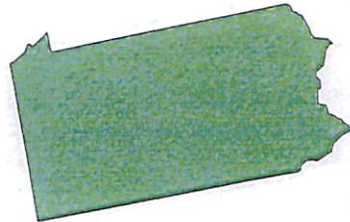
Oklahoma

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM
- NO** Do you allow multiple communities in a credit union's FOM?
- NO** Do any credit unions in your state have statewide FOMs?



Oregon

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM
- NO** Do you allow multiple communities in a credit union's FOM?
- NO** Do any credit unions in your state have statewide FOMs?



Pennsylvania

Community FOM

Geographic FOM

Statewide FOM

Combination association and community FOM

NO Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?



Rhode Island

Community FOM

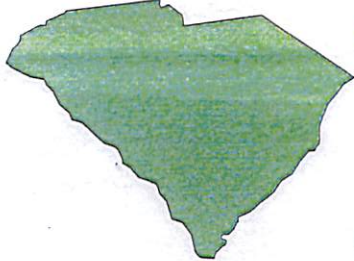
Geographic FOM

Statewide FOM

Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?



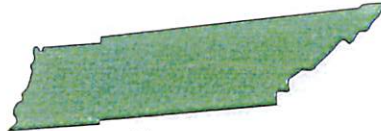
South Carolina

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

NO Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

Source: Carolinas CU League



Tennessee

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

NO Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

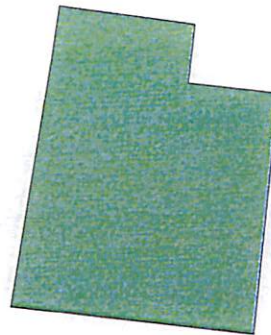


Texas

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?



Utah

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

Do you allow multiple communities in a credit union's FOM?

YES

NO Do any credit unions in your state have statewide FOMs?

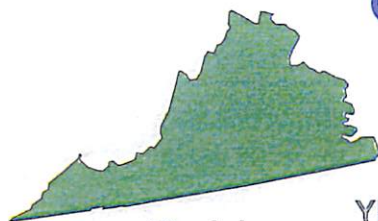


Vermont

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?

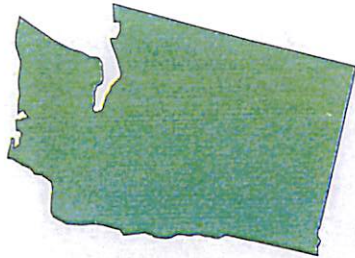


Virginia

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?

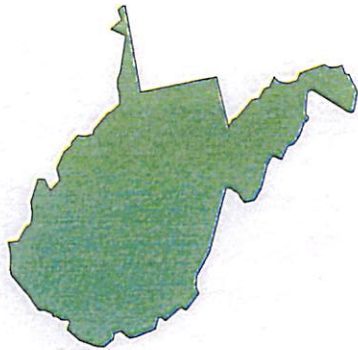


Washington

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?



West Virginia

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

Do you allow multiple communities in a credit union's FOM?

NO Do any credit unions in your state have statewide FOMs?



Wisconsin

- Community FOM
- Geographic FOM
- Statewide FOM
- Combination association and community FOM

YES Do you allow multiple communities in a credit union's FOM?

YES Do any credit unions in your state have statewide FOMs?

NEXT MEETING AND ADJOURNMENT

D. (d) Discussion of and Vote to Establish Date for Next Committee Meeting.

BACKGROUND: If necessary, the next regular meeting of the Committee will be scheduled for February 18, 2016, at 2:00 p.m. in Austin.

ADJOURNMENT