



CREDIT UNION DEPARTMENT

DATE: July 24, 2014

TO: State Chartered Credit Unions

SUBJECT: Change 37 to Update the Texas Rules for Credit Unions

The attached pages constitute changes to the Texas Rules for Credit Unions. Your book of rules should be updated as follows:

REMOVE PAGES

INSERT

AMENDMENTS OR NEW RULES

91-29 thru 91-30

91-29 thru 91-30

Amended Rule [91.501](#)

91-41 thru 91-58-d

91-41 thru 91-58-d

Readopted Rules 91.701, 91.703, 91.705, 91.706, 91.707, 91.708, 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.716, 91.717, 91.718, 91.719 and 91.720 with no changes.

FOR YOUR RECORDS - Please keep this letter of transmittal behind the **Update Tab** of the Rules Section of your binder as a record to show your rules are up to date.

Subchapter E. Direction of Affairs

§91.501. Director Eligibility and Disqualification.

(a) **Board Representation.** The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) **Qualifications.** A member may not serve as director of a credit union if that member:

(1) has been convicted of any criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);

(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;

(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;

(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;

(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) **Director application.** Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) **Director continuing education.** Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to achieve and maintain professional competence. The policy shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that is appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s).

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six (6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

Source: The provisions of this §91.501 adopted to be effective May 11, 2000, 25 TexReg 3951; amended to be effective March 14, 2004, 29 TexReg 2636; amended to be effective July 8, 2007, 32 TexReg 3978; reviewed and amended to be effective July 10, 2011, 36 TexReg 4110; reviewed and amended to be effective July 13, 2014, 39 TexReg 5147.

Subchapter G. Lending Powers

§91.701. Lending Powers.

(a) Authorization. A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Written Policies. Before engaging in any lending activity, each credit union shall establish written lending policies that set prudent credit underwriting and documentation standards for each specific type of lending activity. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

- (1) Be consistent with safe and sound credit union practices;
- (2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;
- (3) Be compatible with the size and expertise of the credit union's lending staff;
- (4) Be compliant with all related laws and regulations;
- (5) Be reviewed and approved by the credit union's board of directors at inception and annually, thereafter;
- (6) Address loan portfolio diversification standards to avoid undue concentrations of risk;
- (7) Address loan documentation and underwriting standards that are clear and measurable;
- (8) Address loan administration procedures for monitoring the loss exposure from the loan portfolio;
- (9) Address loan pricing guidelines to ensure that the rate of return is consistent with the risk from the lending activity; and
- (10) State the lending authority delegated to any individuals or committees by the board of directors.

(c) Loan Documentation. The lending policies shall include loan documentation practices that:

- (1) Enable the credit union to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; and
- (3) Ensure that any claim against a member is legally enforceable.

(d) Credit Underwriting. A credit union shall establish and maintain prudent credit underwriting practices that:

- (1) Are commensurate with the types of loans the credit union will make and consider the terms and conditions under which they will be made;
- (2) Consider the nature of the markets in which loans will be made;
- (3) Provide for consideration of the member's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the member's character and willingness to repay as agreed;
- (4) Take adequate account of concentration of credit risk; and
- (5) Are appropriate to the size of the credit union and the nature and scope of its activities.

(e) **Loan Maturity Limit.** Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of any loan or extension of credit to a member may not exceed 15 years. Minimum payments, on a line of credit balance must be sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization.

(f) **Liquidity.** In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(g) **Waivers.** The commissioner in the exercise of discretion may grant a waiver in writing of any lending requirement described in this chapter. A decision to deny a waiver, however, is not subject to appeal. A waiver request must contain the following:

- (1) The requirement to be waived, the higher limit or the ratio sought;
- (2) An explanation of the need for the waiver or to raise the limit or ratio; and
- (3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

Source: The provisions of this §91.701 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6266; amended to be effective March 14, 2004, 29 TexReg 2637; amended to be effective November 9, 2006, 31 TexReg 9017; reviewed and amended to be effective November 7, 2010, 35 TexReg 9716; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.703. Interest Rates.

(a) Loans made by each credit union shall bear interest at a rate or rates as may be determined by the credit union's board of directors. A board may delegate all or part of its power to determine the interest rates on any lending transactions. The board may also authorize a refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

Source: The provisions of this §91.703 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003; 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and amended to be effective November 7, 2010, 35 TexReg 9717; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.704. Real Estate Lending.

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

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

(2) **Home loan** means a loan that is:

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

(B) secured in whole or part by:

- (i) a manufactured home, as defined by Finance Code <*>347.002, used or to be used as the borrower's principal residence; or
- (ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

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

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

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

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

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

- (1) Title insurance;
- (2) Escrow administration;
- (3) Loan payoffs;
- (4) Collection and foreclosure; and
- (5) Servicing and participation agreements.

(c) Loan to Value Limitations.

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

- (A) Unimproved land held for investment/speculation--Loan to value limit 60%
- (B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%
- (C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%
- (D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%
- (E) Other residential real estate such as a second or vacation home--Loan to value limit 90%

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

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

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

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, the board of directors shall establish written internal maximum maturities for real estate lending transactions. These maturities should not exceed the following regulatory limits:

- (1) Improved residential real estate loans (owner-occupied, first lien)--40 years
- (2) Improved residential real estate loans (not owner-occupied, first lien)--30 years
- (3) Interim construction loans--18 months
- (4) Manufactured home (first lien)--20 years
- (5) Home equity loans--20 years (second lien)--30 years (first lien)
- (6) Home improvement loans--20 years
- (7) All other loans--15 years

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

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

- (1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.
- (2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
- (3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
- (4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.

(g) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

(h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

Source: The provisions of this §91.704 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9018; amended to be effective March 2, 2008, 33 TexReg 1515; amended to be effective March 4, 2009, 34 TexReg 1399; reviewed and amended to be effective November 7, 2010, 35 TexReg 9718.

§91.705. Home Improvement Loans.

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

Source: The provisions of this §91.705 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.706. Home Equity Loans.

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

Source: The provisions of this §91.706 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.707. Reverse Mortgages.

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

Source: The provisions of this §91.707 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.708. Real Estate Appraisals or Evaluations.

(a) **Policies and Procedures.** A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.

(b) **Loans Over \$250,000.** For real estate loans in which the amount of the loan or extension of credit exceeds \$250,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.

(c) **Loans \$250,000 or Less.** For a real estate loans with an amount of the loan or extension of credit of \$250,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral that is supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations or from tax appraisal data of a governmental entity.

(d) **Right to Require an Appraisal.** The commissioner may require an appraisal under this section, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the collateral is overstated.

(e) **Existing Loans.** In the case of renewal of a loan where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of additional funds, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

(f) Other Appraisal Requirements. A credit union shall also comply with applicable real estate appraisal requirements contained within Part 722 of the National Credit Union Administration Rules and Regulations.

Source: The provisions of this §91.708 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 11, 2002, 27 TexReg 6834; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9018; reviewed and amended to be effective November 7, 2010, 35 TexReg 9720; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.709. Member Business Loans.

(a) A member business loan is defined as any loan, line of credit, or letter of credit (including any unfunded commitments), the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose, except that the following shall not be considered a member business loan for the purposes of this rule:

(1) A loan fully secured by a lien on a 1- to 4-family dwelling that is the member's primary residence;

(2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(3) Loan(s) to a member or associated member which, when the net member business loan balances are added together, are equal to less than \$50,000; or

(4) A loan where a federal or state agency or one of its political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.

(b) This section does not apply to loans made by a credit union to other credit unions and credit union service organizations.

(c) Any interest a credit union obtains in a loan that was made by another lender to the credit union's member is a member business loan, for purposes of this section, to the same extent as if made directly by the credit union to its member.

(d) Any interest a credit union obtains in a nonmember loan, pursuant to §91.805 (relating to loan participation investments) shall be treated the same as a member business loan for purposes of this section, except that the effect of such interest on a credit union's aggregate member business loan limit will be as set forth in subsection (f) of this rule.

(e) A credit union with a net worth ratio greater than 6% may make member business loans subject to the conditions of this section. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

(f) If a credit union holds any nonmember loan participation investments that would constitute a member business loan if made to a member, those loans will affect the credit union's aggregate limit on net member business loan balances as follows:

(1) The total of the credit union's net member business loan balances and the nonmember participation investments must not exceed the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets, unless the credit union has first received approval from the commissioner.

(2) To request approval from the commissioner, a credit union must submit a letter application that:

(A) Includes a current copy of the credit union's member business loan policies;

(B) Confirms that the credit union is in compliance with all other aspects of this rule;

(C) States the credit union's proposed limit on the total amount of nonmember loan participation investments that the credit union may acquire if the application is granted; and

(D) Attests that the acquisition of nonmember loan participation investments is not being used, in conjunction with one or more other credit unions, to have the effect of trading member business loans that would otherwise exceed the aggregate limit.

(3) If the commissioner approves the request, the commissioner will promptly forward the request to Region IV of the NCUA for decision under NCUA rules at 12 C.F.R. 723.16. The commissioner's approval is not effective until the regional director of the NCUA approves it in accordance with NCUA Rule at 12 C.F.R. 723.16.

(4) The commissioner shall deny a request to exceed the aggregate limit on a credit union's net member business loan balances, or may revoke a previously approved increased aggregate limit, if the commissioner determines that:

(A) the treatment of loan purchases or participations interest will or has resulted in circumvention of the aggregate limit;

(B) the credit union's level of capital is not commensurate with that needed to support the additional risks that will be or has been incurred; or

(C) the performance of the activity by the credit union will or has adversely affected the safety and soundness of the credit union, or poses a material risk to the share insurance fund.

(g) The aggregate amount of net member business loan balances to any one member or group of associated members shall not be more than 15% of the credit union's net worth (less the Allowance for Loan Losses account) or \$100,000.00, whichever is higher.

(h) All member business loans must be secured by collateral in accordance with this section, except the following:

(1) a credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and

(2) a loan made by a credit union under the following conditions:

(A) the aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of one hundred thousand dollars or 2.5% of the credit union's net worth;

(B) the aggregate of all unsecured outstanding member business loans does not exceed ten percent of the credit union's net worth; and

(C) the credit union has a net worth of at least seven percent.

(i) The maximum loan-to-value (LTV) ratio for a member business loan may not exceed eighty percent, except when:

(1) the loan is secured by collateral on which the credit union will have a first mortgage lien, and the loan is covered by private mortgage or equivalent type insurance, or insured, guaranteed, or subject to advance commitment to purchase, by any federal or state agency or any political subdivision of this State, but in no case may the LTV ratio exceed ninety-five percent; or

(2) the loan is to purchase a car, van, pickup truck, or sport utility vehicle and is not part of a fleet of vehicles, but the LTV ratio and the term for this type of vehicle loan must be consistent with the depreciation schedule of any vehicle used for a particular type of business.

(j) A credit union that engages in this type of lending shall adopt specific member business loan policies and review them at least annually. In addition to the general lending provisions of this subchapter, the member business loan policies, at a minimum, shall address all of the following areas:

(1) Types of business loans to be made and collateral requirements for each type of loan.

(2) The maximum amount of net member business loan balances relative to the credit union's net worth.

(3) The maximum amount of any given category or type of member business loan relative to the credit union's net worth.

(4) The maximum amount that will be loaned to any one member or group of associated members, subject to subsection (g) of this section.

(5) The qualifications and experience requirements for personnel involved in making and servicing business loans, subject to subsection (k).

(6) A requirement for analysis of the member's initial and ongoing financial capacity to repay the debt.

(7) Documentation sufficient to support each request for an extension of credit or an increase in an existing loan or line of credit, except where the board of directors finds that the required documentation is not reasonably available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the standard documentation must include the following:

(A) A balance sheet;

(B) An income statement;

(C) A cash flow analysis;

(D) Income tax data;

(E) Analysis of operating performance ratios, and comparison with industry averages, when applicable; and

(F) Receipt and the periodic updating of financial statements, income tax data, and other documentation necessary to support the borrower's ongoing repayment ability.

(8) Collateral requirements which include all of the following:

(A) Loan-to-value (LTV) ratios;

(B) Appraisal, determination of ownership, and insurance requirements;

(C) Environment impact assessment, when applicable; and

(D) Steps to be taken to secure various types of collateral.

(9) Identification, by position, of the officials and senior management employees who are prohibited from receiving member business loans which, at a minimum, shall include the credit union's chief executive officer, any assistant chief executive officers, the chief financial officer, and any associated member or immediate family member of such persons.

(10) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

(k) The board of directors must use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. A credit union can meet the experience requirement through various approaches, including the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

(l) Any third party used by a credit union to meet the requirements of subsection (k) must be independent from the transaction and is prohibited from having a participation in the loan or an interest in the collateral securing the loan that the third party is responsible for reviewing, with the following exceptions:

(1) the third party may provide a service to the credit union related to the transaction, such as loan servicing;

(2) the third party may provide the requisite experience to the credit union and purchase a participation interest in a loan originated by the credit union that the third party reviewed; or

(3) a credit union may use the services of a CUSO that otherwise meets the requirements of subsection (k) even though the CUSO is not independent from the transaction, provided the credit union has a controlling financial interest in the CUSO as determined under generally accepted accounting principles.

(m) Loans granted for the construction or development of commercial or residential property are subject to the following additional requirements:

(1) The aggregate of the net member business loan balances for all construction and development loans must not exceed 15% of the credit union's net worth. To determine the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property;

(2) The member borrower on such loans must have a minimum of 25% equity interest in the project being financed, the value of which is determined by the market value of the project at the time the loan is made, except that this requirement will not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. Instead the collateral requirements of subsection (i) will apply; and

(3) The funds may be released only after on-site, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

(n) The commissioner, consistent with safety and soundness principles, may grant a waiver of a requirement imposed by this Section only in the following areas:

(1) Aggregate construction or development loan limits under subsection (m);

(2) Minimum borrower equity requirements for construction or development loans under subsection (m);

(3) LTV ratio requirements for member business loans under subsection (i);

(4) Maximum aggregate net member business loan balances to any one member or group of associated members under subsection (g); and

(5) Maximum unsecured member business loan limits under subsection (h).

(o) A waiver request authorized under subsection (n) must contain the following:

(1) A copy of the credit union's member business lending policy;

(2) The higher limit or ratio sought;

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

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

(5) An analysis of the credit union's prior experience making member business loans, including as a minimum:

(A) the history of loan losses and loan delinquency;
(B) volume and cyclical or seasonal patterns;
(C) diversification;
(D) concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of net worth;
(E) underwriting standards and practices;
(F) types of loans grouped by purpose and collateral; and
(G) the qualifications of personnel responsible for underwriting and administering member business loans.

(p) In determining action on a waiver request made under subsection (n), the commissioner will consider the credit union's:

(1) 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.

(2) Adequacy of policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if an approval decision is made.

(3) Record of performance. If the member business loan record is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(4) Elevated 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.

(q) The commissioner will provide the NCUA regional director with a copy of each waiver request made under subsection (n). The regional director will be consulted on all waiver requests. The regional director will provide NCUA's views within 30 calendar days, or NCUA will be deemed to have concurred with the commissioner's decision. The thirty days will begin to run once the commissioner and the regional director agree that the waiver request is complete.

(r) A credit union may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(s) A credit union may not grant a member business loan to a compensated director unless the board of directors approves granting the loan and the compensated director is recused from the decision making process.

(t) If a credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by Commission Rules, then the credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program.

(u) For the purposes of this section, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Associated member – means any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.

(2) 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.

(3) 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.

(4) Net Member Business Loan Balance – means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares or deposits in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member’s primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(5) Net Worth – means retained earnings as defined under Section 702.2 of the National Credit Union Administration’s Rules and Regulations (12 CFR, Chapter VII, Part 702).

Source: The provisions of this §91.709 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective February 23, 2003, 28 TexReg 1377; amended to be effective on March 6, 2005, 30 TexReg 1065; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.710. Overdraft Protection.

(a) Written Policy. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has written policies and procedures adequate to address the credit, operational, and other risks associated with this type of program. The policy must:

1. Set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union’s ability to absorb losses;
2. Establish a time limit no later than 60 calendar days from the date first overdrawn to charge off the overdraft balance if the member does not repay the overdraft balance, or does not obtain an approved loan from the credit union;
3. Limit the dollar amount of overdrafts the credit union will honor per account;
4. Institute prudent practices related to suspension of overdraft protection services; and
5. Establish the fee, if any, the credit union will charge members for honoring overdrafts.

(b) Safety and Soundness Requirements. A credit union must manage the risks associated with an overdraft protection program in accordance with safe and sound credit union principles. Accordingly, a credit union must establish and maintain effective risk management and control processes over its program. Such processes include appropriate recognition, treatment, and financial reporting, in accordance with generally accepted accounting principles, of income, expenses, assets, liabilities, and all expected and unexpected losses associated with the program. A credit union also shall assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its overdraft protection program.

(c) Communications with Member. A credit union shall carefully review its overdraft protection program to ensure that marketing and other communications concerning the program do not mislead members to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed. In addition, a credit union shall take reasonable precautions to make sure members are not misled about the correct amount of their account balance, or the costs or scope of the overdraft protection offered, and that it does not encourage irresponsible member financial behavior that potentially may increase risk to the credit union.

(d) Other Requirements. A credit union shall also comply with the overdraft service requirements contained within Part 205 of the Federal Reserve System Rules and Regulations (Regulation E).

Source: The provisions of this §91.710 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9019; reviewed and amended to be effective November 7, 2010, 35 TexReg 9720; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.711. Purchase and Sale of Member Loans.

(a) Policies. A credit union may sell or purchase all or part of a participation interest in a member loan or pool of member loans in accordance with written policies adopted by the board of directors that address the following matters:

(1) The type of entities to which the credit union is authorized to sell participation interests in member loans;

(2) The types of member loans in which the credit union may purchase or sell a participation interest and the types of participation interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of participation interests in member loans;

(4) Limitations on the aggregate principal amount of participation interest in member loans that the credit union may purchase from a single entity as necessary to diversify risk, and limitations on the aggregate amount the credit union may purchase from all entities;

(5) Provision for the identification and reporting of member loans in which participation interests are sold or purchased; and

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent judgment.

(b) Purchase and Sale Agreements. The sale or purchase of a member loan or participation interest must be based on a written agreement between the parties. Agreements to purchase or sell a member loan or a participation interest shall, at a minimum:

(1) Identify the particular member loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the participation interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the member loan and the protection of the participation interests of the credit union.

(c) Member Loan Servicing. A credit union may sell to or purchase from any participant the servicing of any member loan in which it owns a participation interest. If a party other than the credit union will be servicing the member loan(s), the credit union shall ensure that all contracts require the servicer to administer the member loan(s) in accordance with prudent industry standards, and provide for a possible change of the servicer if performance is inadequate.

(d) Definition. For purposes of this section, a member loan means a loan or extension of credit where the borrower(s) is a member of the credit union or a member of another participating credit union.

- (e) **Independent Credit Judgment.** A credit union that purchases a participation interest in a member loan has the responsibility of conducting member loan underwriting procedures on the member loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards. The credit union shall make a judgment on the creditworthiness of the borrower that is independent of the originating lender and any intermediary seller prior to the purchase of the participation interest and prior to any servicing action that alters the terms of the original agreement. This credit judgment may not be delegated to any person that is not an employee or independent agent of the credit union. A credit union that purchases a participation interest in a member loan may use information, such as appraisals or collateral inspections, furnished by the originating lender, or any intermediary seller; however, the purchasing credit union shall independently evaluate such information when exercising its independent credit judgment. The independent credit judgment shall be documented by a credit analysis that considers the underwriting, documentation, and compliance standards that would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer.
- (f) **Other Requirements.** A credit union purchasing a participation interest in a member loan from a lender that is not a credit union insured by the National Credit Union Share Insurance Fund, must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.
- (g) **Sales with Recourse.** When a member loan or participation interest is sold with recourse, it shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s).

Source: The provisions of this §91.711 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6268; amended to be effective November 9, 2006, 31 TexReg 9019; reviewed and amended to be effective November 7, 2010, 35 TexReg 9720; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.712. Plastic Cards.

- (a) **Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Card Activation** – process of sending new plastic cards from the issuer to the legitimate cardholder in an “inactive” mode. Once the legitimate cardholder receives the card, they must call the issuer/processor and go through a member verification process before the card is “activated”.
 - (2) **Card Security Code** – a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.
 - (3) **Neural Network** – a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity.
 - (4) **Plastic Cards** – includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.
- (b) **Credit cards.** A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:
- (1) Credit policies to set individual limits for credit card accounts;
 - (2) A process for reviewing each member's payment and/or credit history periodically for the purpose of determining risk; and

- (3) The credit underwriting standards for each type of card program offered.
- (c) Program Review.
 - (1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:
 - (A) The amount of losses caused by theft and fraud;
 - (B) The loss prevention measures (and their adequacy) currently employed by the credit union;
 - (C) The availability and possible implementation of other loss prevention measures such as card activation, card security codes, neural networks, and other evolving technology; and
 - (D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.
 - (2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

Source: The provisions of this §91.712 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6268; amended to be effective November 9, 2006, 31, TexReg 9020; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.713. Indirect Lending.

- (a) Indirect Lending Program. Credit unions may implement a program of indirect financing of motor vehicles and other tangible personal property. As used in this chapter, an indirect financing is the credit union's purchase of a member's retail installment contract that is originated by a seller to finance the purchase of the motor vehicle or other property.
- (b) Contracts Treated as a Loan. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting decision. The seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, but the final determination of membership eligibility is the credit union's responsibility.
- (c) Authorization. Credit unions may purchase or hold retail installment contracts when authorized by applicable law. The retail installment contract must provide for a rate or amount of time price differential that does not exceed a rate or amount authorized by applicable law.
- (d) Written Policies. The board of directors shall establish, implement, and maintain prudent and reasonable written policies that are appropriate for the size and complexity of the credit union's indirect lending program. The board must also ensure that the credit union has sufficient staff with the expertise to purchase, service, and monitor the program and the contract portfolio consistent with safe and sound credit union practices. The policies must be specific and detailed enough to foster prudent and compliant credit practices.
- (e) Third Party Providers. A credit union may rely on services provided by third parties to support its indirect lending activities. The board of directors must ensure that the credit union exercises appropriate due diligence before entering into third party arrangements, and maintains effective oversight and control throughout the arrangement. This oversight and control should include a periodic review of each material seller's retail installment contract statistics to ensure compliance with credit union credit criteria and to avoid undue concentrations of risk.

(f) **Subprime Indirect Lending.** If a credit union conducts a program that includes subprime indirect lending, it must perform comprehensive due diligence before engaging in and during that type of activity. At a minimum, due diligence shall focus on understanding the higher levels of credit, compliance, reputation, and other risks involved, plus the likelihood that origination, servicing, collections, operating, and capital costs will increase. The strategic decision to engage in subprime indirect lending must also be supported by a sound business plan that establishes measurable financial objectives as well as limitations on growth, volume, and concentrations. For the purposes of this section, “subprime indirect lending” refers to programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios.

Source: The provisions of this §91.713 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6268; amended to be effective November 12, 2006, 31 TexReg 9020; reviewed and amended to be effective November 7, 2010, 35 TexReg 9721; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.714. Leasing.

(a) **Definitions.** For the purposes of this section:

(1) The term net lease means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for:

(A) the servicing, repair or maintenance of leased property during the lease term;

(B) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of subsection (c)(2)(A) of this section;

(C) the loan of replacement or substitute property while the leased property is being serviced;

(D) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) the renewal of any license, registration, or filing for the property unless such action by the credit union is necessary to protect its interest as an owner or financier of the property.

(2) The term full-payout lease means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the credit union to yield the return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term realization of investment means that a credit union that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals; and

(B) The estimated residual value of the property at the expiration of the term of the lease.

(b) **Permissible Activities.** Subject to the limitations of this section, a credit union may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) **Finance Leasing.**

(1) A credit union may conduct leasing activities that are functional equivalent of loans made under those leases. Such financing leases are subject to the same restrictions that would be applicable to a loan.

(2) To qualify as the functional equivalent of a loan:

(A) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(B) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(C) At the termination of the financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or the value carried on the credit union's books.

(d) **General Leasing.** A credit union may invest in tangible personal property, including vehicles, manufactured homes, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) **Leasing Salvage Powers.** If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (1) and (2) of this subsection.

(f) **Written Policies.** A credit union engaged in lease underwriting must adopt written policies and develop procedures that reflect lease practices that control risk and comply with applicable laws. Any leasing activity must be consistent with the lending policies and underwriting requirements in §91.701 of this title (relating to Lending Powers). Any credit union engaged in making or buying leases also must adopt written policies and procedures that address the additional risks associated with leasing.

(g) **Insurance Requirements.** A credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if the credit union does not own the leased property. Contingent liability insurance protects the credit union if it is sued as the owner of the leased property. A credit union must use an insurance company with a nationally recognized industry rating of at least a B+. Credit union members must still carry the normal liability and property insurance on the leased property and the credit union must be

named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.

(h) Holding Period. At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a credit union shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. The credit union must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

Source: The provisions of this §91.714 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; amended to be effective November 12, 2006, 31 TexReg 9021; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.715. Exceptions to the General Lending Policies.

(a) Credit unions may provide for the consideration of loan requests from creditworthy members whose credit needs do not fit within the credit union's general lending policies. A credit union may provide for prudently underwritten exceptions to its lending policies. However, the Board is responsible for establishing written standards for the review and approval of exception loans.

(b) Each credit union establishing exceptions to its general lending policies shall establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan shall also be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans will be maintained as a part of the permanent loan file. Each credit union shall monitor compliance with its lending policies and individually report exception loans of a significant size to its board of directors.

(c) Exception loans shall be identified in the credit union's records and their aggregate amount reported at least annually to the board of directors. The aggregate amount of all such loans shall not exceed 10 percent of the credit union's net worth.

Source: The provisions of this §91.715 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6269; amended to be effective November 12, 2006, 31 TexReg 9021; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.716. Prohibited Fees.

A credit union shall not make any loan or extend any credit if, either directly or indirectly, any commission, fee, or other compensation from any person or entity other than the credit union is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or extension of credit.

Source: The provisions of this §91.716 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.717. More Stringent Restrictions.

The Commissioner may impose more stringent restrictions on a credit union's loans if the Commissioner determines that such restrictions are necessary to protect the safety and soundness of the credit union.

Source: The provisions of this §91.717 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.718. Charging Off or Setting Up Reserves.

(a) The commissioner, after a determination of value in accordance with generally accepted accounting principles, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established.

(b) A credit union's financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.

(c) The Board of directors is responsible for ensuring that the credit union has controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with its written policies, generally accepted accounting principles, and relevant supervisory guidance. Policies shall be appropriately tailored to the size and complexity of the credit union and its loan and lease portfolio. As a minimum, a credit union shall develop, maintain, and document the methodology used to determine the amounts of an appropriate ALLL and provisions for loan and lease losses. Adjustments to the ALLL shall be made prior to the end of each calendar quarter in order to accurately reflect the loss exposure on the quarterly call reports.

Source: The provisions of this §91.718 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6269; amended to be effective November 12, 2006, 31 TexReg 9021; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.719. Loans to Officials and Senior Management Employees.

(a) **Prohibition on Preferential Rates, Terms, and Conditions.** The rates, terms, conditions, and availability of any loan or other extension of credit made to, or endorsed or guaranteed by, a director, senior management employee, member of the credit committee, or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) **Approval of Governing Board.** Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, senior management employee, member of the credit committee, or an immediate family member of such individual, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and

the members of the person's immediate family is greater than 15% of the credit union's net worth. A loan fully secured by shares in the credit union or deposits in other financial institutions shall not be subject to, or included in, the aggregate amounts included in this section.

(c) **Definition.** For purposes of this section, senior management employees shall include the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above), and the chief financial officer; and immediate family members shall include a person's spouse or any other person living in the same household.

(d) **Aggregate Limit on Insider Loans.** The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by, all directors, credit committee members, senior management employees, and immediate family members of all such individuals, shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) **Reports to Governing Board.** At least annually, the president shall make a report to the board of directors on the outstanding indebtedness of all directors, credit committee members, senior management employees, and immediate family members of such individuals. The Board's review shall be included as part of the minutes of the meeting at which the report was presented. The report required by this section shall include the following information:

(1) The amount of each indebtedness; and

(2) A description of the terms and conditions (including the interest rate, the original amount and date, maturity date, payment terms, security, if any, and any other unusual term or condition) of each extension of credit.

(f) **Governing Board Option.** At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived for any individual if the aggregate amount of all outstanding loans and extensions of credit to that person, the person's business interests, and the members of the person's immediate family do not exceed the greater of \$25,000 or one-quarter of one percent (.25%) of the credit union's net worth.

Source: The provisions of this §91.719 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective on August 10, 2003, 28 TexReg 6269; amended to be effective March 14, 2004, 29 TexReg 2637; amended to be effective November 12, 2006, 31 TexReg 9022; reviewed and amended to be effective November 7, 2010, 35 TexReg 9721; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

§91.720. Small-Dollar, Short-Term Credit.

(a) **General.** Credit unions are encouraged to offer small-dollar credit products that are affordable, yet safe and sound, and consistent with applicable laws. The goal in offering these small-dollar credit products should be to help members avoid, or transition away from, reliance on high-cost debt. To accomplish this goal, credit unions should offer products with reasonable interest rates, low fees, and payments that reduce the principal balance of the loan or extension of credit.

(b) **Definition.** For purposes of this section, small-dollar, short term credit product is defined as a low denomination loan or extension of credit having a term of 6 months or less, where the amount financed does not exceed \$1,100. Each credit union is responsible for establishing appropriate dollar limits and terms based upon its size and sophistication of operations, and its net worth.

(c) **Limitation.** Accessibility and expediency are important factors for many members with emergency or other short-term needs. Therefore, small-dollar credit products must balance the need for quick availability of funds with the fundamentals of responsible lending. Sound underwriting criteria should focus on a member's history with the credit union and ability to repay a loan within an acceptable timeframe. Given the small dollar amounts of each individual credit request, documenting the member's ability to repay can be streamlined and may need to include only basic information, such as proof of recurring income. The aggregate total of streamlined underwritten small-dollar credit products outstanding, however, shall not exceed 20% of the credit union's net worth.

(d) **Fees.** A credit union may require a member to pay reasonable expenses and fees incurred in connection with making or closing a loan. With respect to expenses and fees being assessed on small-dollar, short-term credit products, the expenses and fees are presumed to be reasonable if the aggregate total is \$20 or less. In addition, if the credit union refinances a small-dollar, short-term credit product, it may charge such expenses and fees only once in a 180-day period. Credit unions may also charge a late fee as permitted by Finance Code §4124.153.

(e) **Payments.** Credit unions should structure payment programs in a manner that reduces the principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments. Lines of credit should require minimum payments that pay off principal. Excessive renewals or the prolonged failure to reduce the outstanding balance are signs that the product is not meeting the member's credit needs and will be considered an unsound practice.

(f) **Required Savings.** Credit unions may structure small-dollar credit programs to include a savings component. The funds in this account may also serve as a pledge against the loan or extension of credit.

Source: The provisions of this §91.720 adopted to be effective July 11, 2010, 35 TexReg 5807; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.

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