



CREDIT UNION COMMISSION

Rules Committee Meeting

Credit Union Department Building

914 East Anderson Lane

Austin, Texas

June 18, 2015

AGENDA

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- D.** Discussion of and Possible Vote to Establish Date for Next Committee Meeting (October 15, 2015 at 2:00 p.m.)

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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

- ***Rob Kyker, Chairman***
- ***Sherri B. Merket, Vice Chair***
- ***Allyson “Missy” Morrow***
- ***Kay Stewart***
- ***A. John Yoggerst***
- ***Manuel “Manny” Cavazos, Ex-Officio***

Legal Counsel

- ***Zindia Thomas***

Staff

- ***Harold E. Feeney***
- ***Stacey McLarty***
- ***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 19, 2014, 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 19, 2014, meeting be approved as presented.

**RULES COMMITTEE
MEETING MINUTES
JUNE 19, 2014**

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 Sherri Merket, Missy Morrow, and Kay Stewart. John Yoggerst was absent due to a scheduling conflict. Ex-officio Member Manny Cavazos was absent due to the untimely passing of a family member. Commission Members Gary Janacek and Vik Vad also attended the meeting but did not participate in the deliberations of the Committee. 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, 2014, TRD#2014004184**).

- **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 (February 20, 2014)

Ms. Merket moved to accept the minutes of the February 20, 2014 meeting as presented. Ms. Stewart seconded the motion, and the motion was unanimously adopted.

C. UNFINISHED BUSINESS

(a) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.501. Commissioner Feeney noted that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.501. He indicated that no comments were received during the comment period regarding the proposed amendments.

After a short discussion, Ms. Stewart moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.501** as previously published in the *Texas Register*. Ms. Morrow seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Withdraw the Previously Published Proposed Amendments to 7 Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and Approve the Republication for Comment of the Revised Proposed Amendments to 7 TAC Section 91.502. Commissioner Feeney noted that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.502. He further indicated that the official record for this rule does not reflect the receipt of any comments; however, after the conclusion of the comment period the Department did receive communication from an interested party related to the proposed amendments. Although the Commission is under no obligation to consider the late comment, staff believes that for clarity and uniformity purposes some revisions to the proposed amendments may be appropriate. Commissioner Feeney suggested that subsection (c) should be revised to give the Commissioner authority to prohibit or otherwise

limit or restrict the payment of meeting fees that are “excessive”. He noted that “excessive” is already defined in subsection (f) and is the benchmark for boards to determine if their fees are appropriate under the totality of the circumstances.

After a brief discussion, Ms. Stewart moved to recommend that the Commission withdraw the previously published proposed amendments, and approve for republication the revised proposed amendments to **7 TAC Section 91.502**. Ms. Merket seconded the motion and the motion was unanimously adopted.

Assistant Attorney General Nancy Fuller arrived at 2:05 p.m. to serve as legal counsel for the Committee.

D. NEW BUSINESS

(a) **Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit).** Commissioner Feeney noted that as required by Section 2001.39 of the Government Code and the Commission’s Rule Review Plan, staff reviewed all of the rules within 7 TAC Part 6, Chapter 9, Subchapter G in its entirety. He explained that, with the exception of 7 TAC Section 91.704,

staff believes that the reasons for adopting these rules continue to exist and that no changes should be made at this time. He further noted that no comments were received during the review period. Commissioner Feeney noted that the Commission had previously approved a plan which establishes a date for the required review for each of the affected rules.

After a short discussion, Ms. Morrow moved to recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.701, 91.703, 91.705, 91.706, 91.707, 91.708, 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, 91.718, 91.719, and 91.720** continue to exist and that the rules be readopted without change. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(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 91.704. Commissioner Feeney noted that the provisions of Rule 91.704 have caused some confusion with respect to member business loans that are secured by residential rental property. He indicated that the proposed amendments seek to clarify the maturity limit for a first lien on investment property.

After a brief discussion, Ms. Merket moved to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.704** concerning real estate lending. Ms. Morrow seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50g). Commissioner Feeney indicated that the proposed amendments implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*. He also pointed out that the Home Equity Interpretations are considered "joint interpretations" with the Finance Commission of Texas. Therefore, to be effective both bodies must take identical actions.

After a short discussion, Ms. Stewart moved subject to the approval of the same proposed amendments by the Finance Commission, to recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Sections 153.1, 153.5, 153.15 and 153.51. Ms. Merket seconded the motion and the motion was unanimously adopted.

(d) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests. Commissioner Feeney explained that NCUA has begun exercising its authority to impose civil money penalties against federally insured credit unions that fail to meet filing deadlines for call reports. NCUA has indicated that it is imposing these penalties solely to deter late filing and any funds collected will be remitted to the U.S. Treasury not retained for NCUA use. Since the penalties proposed by NCUA will be reduced by the amount of any penalties imposed by the state regulator, the proposed amendments are an attempt to keep credit union capital in Texas.

Chairman Kyker opened the floor for public testimony on this proposal.

- ❖ **Gary Janacek, Commission Member.** Mr. Janacek expressed his concerns about the federal call report. He noted that the one size fits all call report takes hours to complete, and there should be an outcry at both the State and National level on this issue. He further stated that he hopes that credit unions will take the initiative to voice their concerns about these civil money penalties.
- ❖ **Mike Riepen, President – Texas DPS Credit Union.** Mr. Riepen indicated his agreement with Mr. Janacek's comments. He reiterated that the call report is time consuming, complex and difficult and it is totally offensive to credit unions to impose late penalties.
- ❖ **Jeff Huffman – Vice President, Government Relations, Texas Credit Union Association.** Mr. Huffman suggested that the Commission may want to consider adopting a resolution expressing the concerns about the proposed penalties and submit to the NCUA and the Texas Congressional delegation and raise the profile of the issue.

Although the speakers generally disfavored NCUA penalties, they were in favor of the Department's proposal to keep the funds in Texas.

Commissioner Feeney noted that Congress granted the same civil money penalty authority to all federal financial regulatory agencies. He further clarified that credit unions submitting call reports with excessive errors could also trigger civil money penalties.

After a lengthy discussion, Ms. Merket moved to recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.209 concerning call reports and other information requests. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(e) **Discussion of and Vote to Establish for Next Committee Meeting.** Chairman Kyker reminded everyone that the next regular meeting of the Committee has been tentatively scheduled for October 16, 2014, at 2:00 p.m., in Austin.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 2:43 p.m.

Rob Kyker
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.

NEW BUSINESS

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

- a. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.802 Concerning Other Investments.
- b. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.803 Concerning Investment Limits and Prohibitions.
- c. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.805 Concerning Loan Participation Investments.
- d. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.901 Concerning Reserve Requirements.
- e. Readopt 7 TAC Section 91.801 (Investments in Credit Union Service Organizations), 7 TAC Section 91.804 (Custody and Safekeeping), 7 TAC Section 91.808 (Reporting Investment Activities to the Board of Directors) and 7 TAC Section 91.902 (Dividends).
- f. Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets.

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

OTHER INVESTMENTS

C. (a) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.802 Concerning Other Investments.

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 Section 91.802 and is recommending that changes be made.

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.

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 91.802 concerning other investments.

The Credit Union Commission (the Commission) proposes amendments to §91.802 concerning Other Investments. 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 proposed as a result of the Texas Credit Union Department's (Department) general rule review.

Stacey McLarty, 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. McLarty 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 Stacey McLarty, 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 §124.351 which explains permitted investments.

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

§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) (4) 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) (5) 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) (6) Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

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

(9) (8) 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) (9) 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** Act.

(11) (10) **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) (11) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

(13) (12) 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) (13) 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.

~~(13) 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.~~

~~(14) 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.~~

(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) (48) 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** Aet, 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 government-sponsored enterprises enterprise obligations such as, for example: the Federal Home Loan Banks Systems, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Farm Credit Bank, and the Student Loan Marketing Association.**

(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** five 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** five years or less.

(14) Mortgage-related securities. With the exception of "accrual bonds" (or Z bonds) or 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 five 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 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 rule 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. (b) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.803 Concerning Investment Limits and Prohibitions.

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 Section 91.803 and is recommending that changes be made.

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.

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 91.803 concerning investment limits and prohibitions.

The Credit Union Commission (the Commission) proposes amendments to §91.803 concerning Investment Limits and Prohibitions. 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.

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

Stacey McLarty, 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. McLarty 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 Stacey McLarty, 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 §§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 is Texas Finance Code, §§124.351 and 124.352.

Subchapter H. Investments

§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,** investments issued by, or fully guaranteed as to principal and interest by, the United States 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) (C) Fair value--the price at which a security can be bought or sold in a current, **arm's** arms length transaction between willing parties, other than in a forced or liquidation sale.

(E) (D) 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) (E) 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) (F) Short sale--the sale of a security not owned by the seller.

(H) ~~(G)~~ Stripped mortgage-backed security (SMBS)--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. ~~Some mortgage-backed securities represent essentially principal-only cash flows with nominal interest cash flows or essentially interest-only cash flows with nominal principal cash flows. These securities are considered SMBSs for the purposes of this rule.~~

(I) ~~(H)~~ 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** Purchase or sell financial derivatives **for replication, or for any purposes other than hedging** such as futures, options, interest rate swaps, or forward rate agreements;

(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;** ~~or~~

(G) Purchase small-business-related securities **any security that has the capability of becoming a first credit loss piece which supports another more senior security;**

(H) ~~(D)~~ Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(I) ~~(E)~~ Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits; ~~or~~

(J) ~~(F)~~ 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) ~~(K)~~ **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.

Isabel Velasquez

From: Tim Miller [REDACTED]
Sent: Tuesday, May 05, 2015 1:33 PM
To: info
Subject: Rule Review Comment

May 5, 2015

Credit Union Department
914 East Anderson Lane
Austin TX 78752-1699

Dear Credit Union Commission:

Please accept this correspondence as an official comment from Cooperative Teachers Credit Union (CTCU) for the rule review of §91.803 (Investment Limits and Prohibitions). CTCU would like the Credit Union Commission (Commission) to consider removing the phrase "small business related securities" from §91.803(2)(C).

It is the belief of CTCU that removing SBA investments from the list of prohibited investments will better serve Texas credit unions and their members by allowing Texas credit unions to compete effectively with other providers of financial services. Current National Credit Union Administration (NCUA) rules allow federal-chartered credit unions the option to invest in SBA investments. By removing SBA investments from the prohibited investment list, the Commission will allow Texas credit unions the ability to compete with federal-chartered credit unions.

Additionally, if the Commission allows SBA investments, then Texas credit unions that do not offer member business lending will be able to diversify their balance sheet and reduce the existence of asset concentrations. A balance sheet that consists of SBA investments will allow Texas credit unions the opportunity to improve their asset quality by improving the diversification and quality of their loan and investment portfolios.

Furthermore, SBA investments that contain variable-rate loans may help reduce the interest-rate risk (IRR) to Texas credit unions. Generally, these investments contain loans in which the loan rate adjust quarterly and moves with the prime rate, thus reducing the IRR of the securities and overall balance sheet.

In conclusion, CTCU has made the decision to not offer member-business loans and it is aware of the risks associated with that decision. Being a consumer lender that specializes and operates in a limited geographical area opens up CTCU to asset quality risks and IRR. By allowing SBA investments, the Commission will allow Texas credit unions to compete against other providers of financial services, improve their asset quality and reduce their sensitivity to market risks. With this in mind, CTCU is requesting the Commission allow Texas credit unions the ability to invest in SBA investments.

Sincerely,

Timothy Miller
President
Cooperative Teachers Credit Union
1424 WSW Loop 323
Tyler TX 75701
903-561-2603

LOAN PARTICIPATION INVESTMENTS

C. (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.

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 Section 91.805 and is recommending that changes be made.

The amendments clarify permitted participation interests and eliminates 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.

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 91.805 concerning loan participation investments.

The Credit Union Commission (the Commission) proposes amendments to §91.805 concerning Loan Participation Investments. The amendments clarify permitted participation interests and eliminates 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 proposed as a result of the Texas Credit Union Department's (Department) general rule review.

Stacey McLarty, 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. McLarty 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 Stacey McLarty, 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 §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 H. Investments

§91.805. Loan Participation Investments.

(a) A credit union may purchase a participation interest in a ~~non-member loan~~, **where the borrower is neither a member of the credit union or a member of another participating credit union**, from a corporation, credit organization, or financial organization, as permitted by §124.351(a)(8) of the **Texas Finance Code**. Aet provided the **following conditions are satisfied** credit union:

(1) **the purchase complies with all regulatory requirements to the same extent as if the credit union had originated the loan** is specifically empowered to purchase such investments in the board's written investment policy;

(2) **the originating lender retains at least 10 percent of the outstanding balance of the loan through the life of the loan** does not obtain an interest greater than 90% of the face amount of each individual loan, if the borrower is not a member of the credit union or a member of another participating credit union;

(3) **the purchase complies with the credit union's investment policy, which, at a minimum, must:** uses the same underwriting standards for loan participation investments as it does for loans originated by the credit union; and

(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.** Limits its aggregate investment in loan participation investments to an amount no greater than 50% of the credit union's net worth.

(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. (d) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.901 Concerning Reserve Requirements.

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 Section 91.901 and is recommending that changes be made.

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 Section 91.901(b)(1).

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 91.901 concerning loan participation investments.

The Credit Union Commission (the Commission) proposes amendments to §91.901 concerning Reserve Requirements. 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 proposed as a result of the Texas Credit Union Department's (Department) general rule review.

Stacey McLarty, 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. McLarty 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 could be an economic cost to credit unions that are required to comply with the amendment as a result of its future adoption, given credit unions that are less than well capitalized will be required to devote staff time and resources to the development of the financial plan, as failure to file or fulfil the terms of the plan may potentially subject them to other sanctions that could impact their growth opportunities. However, there is no way to accurately project that cost at this time.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Stacey McLarty, 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 §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, whichever 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 Section 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.

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MANDATORY RULE REVIEW

D. (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).

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 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.

Notice of review and a request for comments on the rules in this chapter was published in the April 3, 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 91.801, 91.804, 91.808, and 91.902 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, §§91.801 (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), as published in the April 3, 2015 issue of the *Texas Register* (40 TexReg 1997). 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 on the readoption these rules without changes. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.801, 91.804, 91.808, and 91.902 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

Subchapter H. Investments

§91.801. Investments in Credit Union Service Organizations.

(a) Definitions. As used in this section:

(1) A credit union service organization (CUSO) is an organization whose primary purpose is to strengthen or advance the credit union movement, serve or otherwise assist credit unions or their operations, and provide products or services authorized by this section to credit unions and their members.

(2) An investment in a CUSO includes the following:

(A) an investment in the stock, bonds, debentures, or other equity ownership interest of the CUSO; and

(B) loans granted by a third party to the CUSO which are guaranteed in writing by the credit union.

(3) A financing program is a plan, approved by the credit union's board of directors, that provides for multiple extensions of credit to a CUSO during the regular course of business.

(b) Authority. A credit union by itself, or with other parties, may organize, invest in or make loans to a CUSO only if it is structured and operated in a manner that demonstrates to the public that it maintains a legal existence separate from the credit union. A credit union and a CUSO must operate so that:

(1) their respective business transactions, accounts, and records are not intermingled;

(2) each observes the formalities of its separate corporate or other organizational procedures;

(3) each is adequately capitalized as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) each is held out to the public as a separate and distinct enterprise;

(5) all transactions between them are at arm's length and consistent with sound business practices as to each of them;

(6) unless the credit union has guaranteed a loan to the CUSO, all borrowings by the CUSO indicate that the credit union is not liable; and

(7) their respective activities are in compliance with any licensing or registration requirements imposed by applicable federal or state law.

(c) Notice; Authorization; Supplemental Information; Written Objection.

(1) Required Notice. Before committing to any aggregate investment or loan to a CUSO in an amount greater than 15% of the credit union's net worth, a credit union shall provide at least thirty days' written notice to the commissioner of its intent to make or increase its investment in a CUSO, or make a loan to or enter into a financing program with a CUSO. Subject to the net worth threshold, a credit union shall also provide notice of its intent to engage in additional or substitute activities in an existing CUSO or its intent to materially alter an existing loan or financing program with a CUSO. The written notice shall include as applicable:

(A) a description of the organizational and legal structure of the CUSO and the proposed method of capitalizing the organization;

(B) a description of the loan, including the purpose, terms, guarantors, and collateral;

(C) a description of the products or services to be offered by the CUSO and the customer base it will serve;

(D) an explanation of how the CUSO will primarily serve credit unions or members of credit unions, or how the activities of the CUSO could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union; and

(E) a representation that the activities will be conducted in accordance with applicable law, the requirements of this section, and in a manner that will limit exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO.

(2) Authorization to Proceed. If the commissioner issues a non-objection letter, the credit union may proceed with the proposed transaction when it receives the letter. Otherwise, a credit union may proceed with the proposed transaction or the CUSO may engage in the new activities 30 days after the department receives the required notice, unless the commissioner takes one of the following actions before the expiration of that time period:

(A) the commissioner notifies the credit union that it must file additional information supplementing the required notice. If a credit union is required to file additional information, it may proceed with the proposed transaction or the CUSO may engage in the new activities 30 days after the department receives the requested information, unless the commissioner issues a written objection before the expiration of that time period; or

(B) the commissioner notifies the credit union of an objection to the proposed transaction or new activity.

(3) Request for Supplemental Information. A credit union shall provide any additional information reasonably requested by the commissioner.

(4) Action on a Notice. The commissioner shall object to a proposed transaction or activity if the commissioner finds that:

(A) there is inadequate capital to support the proposed transaction or activity;

(B) the proposed transaction or activity does not comply with this section;

(C) the credit union's concentrated exposures to the CUSO give rise to safety and soundness issues; or

(D) the credit union has regulatory or operational deficiencies which would materially affect its ability to properly and effectively manage and monitor the risk associated with the CUSO.

(5) Written Objection. If the commissioner determines that an objection should be interposed, the commissioner will notify the credit union in writing of the determination and the actions the credit union must take to proceed with the proposed transaction or activity. A credit union receiving notification of an objection may appeal the commissioner's finding to the commission in the manner provided by Chapter 93, Subchapter C of this title (relating to Appeals of Preliminary Determinations on Applications).

(d) Limitations. The board of directors of a credit union that organizes, invests in, or lends to any CUSO shall adopt and maintain written policies, which establish appropriate limits and standards for this type of investment including the maximum amount relative to the credit union's net worth, that will be invested in or loaned to any one CUSO. The maximum amount invested in any one CUSO may not exceed the statutory limit established by Texas Finance Code §124.352(b). Total investments in and total loans to CUSOs shall not, in the aggregate, exceed 10% of the total unconsolidated assets of the credit union, unless the credit union receives the prior written approval of the commissioner. The amount of loans to CUSOs, cosigned, endorsed, or otherwise guaranteed by the credit union, shall be included in the aggregate for the purpose of determining compliance with the limitations of this section.

(e) Prohibitions. No credit union may invest in or make loans to a CUSO:

(1) if any officer, director, committee member, or employee of the credit union or any member of the immediate family of such persons owns or makes an investment in or has made or makes a loan to the CUSO;

(2) unless the organization is structured as a corporation, limited liability company, registered limited liability partnership, or limited partnership;

(3) unless the credit union has obtained written legal advice that the CUSO has been designed in a manner that will limit the credit union's potential exposure to no more than the amount of funds invested in or loaned to the CUSO;

(4) if the CUSO engages in any revenue-producing activity other than the performance of services for credit unions or members of credit unions, and such activity equals or exceeds one half (1/2) of the CUSO's total revenue;

(5) unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO;

(6) unless the CUSO is adequately bonded or insured for its operations;

(7) unless the CUSO obtains an annual opinion audit, by a licensed Certified Public Accountant, on its financial statements in accordance with generally accepted auditing standards, unless the investment in or loan to the CUSO by any one or more credit unions does not exceed \$100,000, or the CUSO is wholly owned and the CUSO is included in the annual consolidated financial statement audit of its parent credit union; or

(8) if any director of the credit union is an employee of the CUSO, or anticipates becoming an employee of the CUSO upon its formation.

(f) Permissible activities and services. The commissioner may, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, a credit union may invest in or loan to a CUSO that is engaged in providing products and services that include, but are not limited to:

(1) operational services including credit and debit card services, cash services, wire transfers, audits, ATM and other EFT services, share draft and check processing and related services, shared service center operations, electronic data processing, development, sale, lease, or servicing of computer hardware and software, alternative methods of financing and related services, other lending related services, and other services or activity, including consulting, related to the routine daily operations of credit unions;

(2) financial services including financial planning and counseling, securities brokerage and dealer activities, estate planning, tax services, insurance services, administering retirement, or deferred compensation and other employee or business benefit plans;

(3) internet-based or related services including sale and delivery of products to credit unions or members of credit unions; or

(4) any other product, service or activity deemed economically beneficial or attractive to credit unions or credit union members if approved, in writing, by the commissioner.

(g) Compensation. A credit union director, senior management employee, or committee member or immediate family member of any such person may not receive any salary, commission, or other income or compensation, either directly or indirectly, from a CUSO affiliated with their credit union, unless received in accordance with a written agreement between the CUSO and the credit union. The agreement shall describe the services to be performed, the rate of compensation (or a description of the method of determining the amount of compensation) and any other provisions deemed desirable by the CUSO and the credit union.

The agreement, and any amendments, must be approved by the board of directors of the credit union and the board of directors (or equivalent governing body) of the CUSO prior to any performance of service or payment and annually thereafter. For purposes of this section, senior management employee shall include the chief executive officer, any assistant chief executive officers (vice presidents and above), and the chief financial officer. Immediate family shall include a person's spouse or any other person living in the same household.

(h) Examination fee. If the commissioner requests a CUSO to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). The commissioner may waive the supplemental examination fee or reduce the fee.

(i) Exception. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may make an investment in or make loans to a CUSO that is not limited by the restriction set forth in subsection (e)(4) of this section, provided the activities of the CUSO are limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exception, all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing loan, advance additional funds, or increase the investment in the CUSO without the prior written approval of the commissioner.

(j) Change in Valuation. If the limitations established by this section are reached or exceeded solely because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, divestiture is not required. A credit union may continue to invest up to the limitation without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

§91.804. Custody And Safekeeping.

(a) A credit union's purchased investments and repurchased collateral must be in its possession, recorded as owned by the credit union through the federal reserve book-entry system, or be held by a board-approved safekeeper under a bailment for hire contract or a custodial arrangement subject to regulation by the Securities and Exchange Commission. Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission or a federal or state financial institution regulatory agency. For the purposes of this section a bailment for hire contract has the same meaning as in §91.802 (relating to Other Investments). Annually, a credit union must analyze the ability of any safekeeper used by the credit union to fulfill its custodial responsibilities, as evidenced by capital strength and financial conditions. The credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations (NRSROs), relevant disclosure documents such as annual independent auditor reports, and other sources of financial information. At least monthly, a credit union must obtain and reconcile a statement of purchased investments and repurchased collateral held in safekeeping.

(b) A credit union that invests funds in a certificate of deposit in a financial institution as defined in §91.802 (relating to Other Investments) shall hold such certificate of deposit in the name of the credit union or, if held by a safekeeper or registered broker-dealer, in the safekeeper's or registered broker-dealer's name as custodial nominee for a credit union. Any certificate of deposit held by a safekeeper or registered broker-dealer as custodial nominee for a credit union or the credit

union's registered broker or dealer must be eligible for extended or flow-through insurance coverage to the credit union through either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

§91.808. Reporting Investment Activities to the Board of Directors.

(a) A credit union shall provide its board of directors a monthly comprehensive report of investment activities, including:

- (1) investments purchased and sold during the month;
- (2) unrealized market gains or losses compared to book value for each security at month's end;
- (3) fair or market value of each security;
- (4) total book value of investments outstanding at month's end;
- (5) unrecorded and unreported obligations to buy or sell investments; and
- (6) amount of investments, other than deposits and investments in designated depositories, that are not either issued by, or fully guaranteed as to principal and interest by, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the United States or any agency, enterprise, corporation, or instrumentality of the United States, or in any trust or trusts established for investing, directly or collectively, in such securities, obligations or instruments.

(b) The credit union shall also provide a quarterly report to the board of directors that summarizes the volatility of the entire security portfolio, if the aggregate amount of securities with one or more of the features included below exceeds the credit union's net worth:

- (1) embedded options;
- (2) remaining maturities greater than three years; or
- (3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) The report described in subsection (b) of this section must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on the:

- (1) fair value of each security in the entire portfolio;
- (2) fair value of the entire security portfolio as a whole; and
- (3) credit union's net worth.

(d) For the purposes of this section, an embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

Subchapter I. Reserves and Dividends

§91.902. Dividends.

(a) Dividend eligibility shall be prescribed by written board policy.

(b) When a credit union is subject to a cease and desist order or is otherwise notified that it is deemed to be in a troubled condition or engaged in an unsafe practice, the credit union must

obtain prior written approval of the commissioner before it declares or pays any dividend or interest refund. A request for approval to pay a dividend or interest refund under this section must be in writing and must include the following supporting information:

- (1) the proposed dividend and/or interest refund rate and the estimated total dollar amount of payment;
- (2) an analysis of the credit union's ability to make the payment from current earnings without incurring an operating loss for the period; and
- (3) an explanation of the progress in resolving the areas of concern detailed in the cease and desist order or the examiner's findings schedule of the most recent report of examination.

PURCHASE, LEASE, OR SALE OF FIXED ASSETS

C. (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.

BACKGROUND: Texas Finance Code §123.103 authorizes credit unions to purchase, hold, lease, or dispose of property, subject to commission rules. 7 TAC §91.401 was promulgated under this statutory authority to detail the rights and responsibilities of credit unions regarding property ownership. The Department has reviewed this rule and proposes several amendments to the rule. 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 proposed amendments are intended to allow more flexibility to credit unions for investments in property and to reduce regulatory burden for credit unions

The amendments proposed allow more flexibility to credit unions for investments in property and will result in reduced regulatory burden for credit unions.

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 91.401 concerning loan participation investments.

The Credit Union Commission (the Commission) proposes amendments to §91.401 concerning Purchase, Lease or Sale of Fixed Assets. 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 amendments proposed allow more flexibility to credit unions for investments in property and will result in reduced regulatory burden for credit unions.

Stacey McLarty, 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. McLarty 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 Stacey McLarty, 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, 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 rule is Texas Finance Code, Section §123.103.

§91.401. Credit Union Ownership of Property ~~Purchase, Lease, or Sale of Fixed Assets.~~

(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.** ~~Fixed Assets real property, premises, furniture, fixtures and equipment.~~

(2) **Immediate family member--a spouse or other family member living in the same household.** ~~Furniture, fixtures, and equipment all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment, including capitalized leases of such items.~~

(3)(4) **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.** ~~any office, service center, parking lot, or other facility where the credit union transacts or intends to transact business. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.~~

(5) ~~Real property land and anything growing on, attached to, or erected on it that is acquired and intended primarily for the credit union's own use in conducting business. It does not include any real property which may be conveyed to the credit union in satisfaction of debts previously contracted in the course of business, nor any real estate that the credit union purchases at sale on judgments, decrees, mortgage or deed of trust foreclosures under a security agreement held by the credit union.~~

(4)(6) 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 **Fixed Asset 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. ~~A credit union may purchase fixed assets or enter into a contract for the purchase or lease of fixed assets primarily for its own use in conducting business if the aggregate of all such investments does not exceed the lesser of 70% of the credit union's net worth or six percent of total assets.~~

(c) Restrictions **on Ownership of Property.**

(1) A credit union shall not **acquire premises** ~~purchase real estate (land or buildings)~~ for the principal purpose of engaging in real estate rentals or speculation.

(2) ~~A credit union bidding at a foreclosure or similar sale shall not bid a larger amount than is necessary to satisfy the debts and costs owed the credit union.~~

(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** Waiver.

Generally, a credit union need not obtain the Department's approval to invest in premises. The commissioner may, upon written application, waive or modify any of the limitations or restrictions placed on the investment of fixed assets. 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.

(g) ~~Written application.~~

~~A credit union requesting a waiver or modification of the fixed asset investment limits, shall submit statements and reports required by the commissioner, including but not limited to:~~

~~—— (1) —— a description of the proposal's cost, usage, location, and method of financing;~~

~~—— (2) —— a statement of the business reasons for making the investment and the economic advantages and disadvantages relating to the proposed investment;~~

~~—— (3) —— evidence in the form of financial statements with supporting assumptions that the increase in operating expenses caused by the project can be supported after accounting for the current level of expenses and dividend commitments; and~~

~~—— (4) —— the credit union's latest balance sheet, income statement, loan delinquency report, and a budget reflecting the new fixed asset.~~

D

NEXT MEETING AND ADJOURNMENT

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 October 15, 2015, at 2:00 p.m. in Austin.

ADJOURNMENT