

**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

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