

**RULES COMMITTEE
MEETING MINUTES
OCTOBER 15, 2015**

A. CALL TO ORDER – Chairman Vik Vad 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 Kay Stewart, Steven “Steve” Gilman, Gary Tuma and Commission Chairman Manny Cavazos, ex-officio member. Assistant Attorney General Zindia Thomas was in attendance to serve as legal counsel. Staff members in attendance were Harold E. Feeney, Commissioner and Shari Shivers, Assistant Commissioner and General Counsel. Chairman Vad appointed Isabel Velasquez as recording secretary. The Chair also inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**October 5, 2015, TRD#2015006765**).

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

B. RECEIVE MINUTES OF PREVIOUS MEETING (June 18, 2015)

Mr. Tuma moved to approve the minutes of June 18, 2015 as presented. Mr. Gilman seconded the motion, and the motion was unanimously adopted.

C. UNFINISHED BUSINESS

(a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets. Commissioner Feeney explained briefly that the proposed amendments streamline and clarify a number of definitions, reduce the requirement for credit unions to obtain prior

approval from the Department to invest in premises, and explains the standards for evaluating a request to invest in credit union premises in an amount that exceeds the credit union's net worth. He noted that the Commission received no comments on the proposed changes.

After a short discussion, Mrs. Stewart moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.401** as previously published in the *Texas Register*. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed 7 Section 91.802 Concerning Other Investments. Commissioner Feeney indicated that the amendments add definitions of certain terms, clarify and amend existing terms in the rule, and explain the standard for understanding terms not defined in the rule. He noted that the Commission received no comments on the proposed changes.

After a brief discussion, Mr. Gilman moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.802** as previously published in the *Texas Register*. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(c) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.803 Concerning Investment Limits and Prohibitions. Commissioner Feeney briefly explained that the amendments exclude deposits held by a Federal Reserve from the limitations on investments with any one obligor. He noted that the proposed 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. He indicated that the Commission received one written comment in which the commenter was concerned about some technical language differences that might cause some to be concerned and might cause confusion and proposed that the Commission add the word “sponsored” before the word “enterprise” under Section 91.803(a). Mr. Feeney recommended that this non-substantive change should be made. In addition, he explained that the commenter also suggested adding some language to Section 91.803(a) to include investments referred to in Section 91.802(c)(10). Commissioner Feeney indicated that staff felt that suggested addition language would be redundant and unnecessary.

After a short discussion, Mr. Tuma moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.803** with the single non-substantive change to the proposal that was previously published in the *Texas Register*. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(d) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.805 Concerning Loan Participation Investments. Commissioner Feeney reported that the amendments clarify permitted participation interests and eliminate the specific limitation on aggregate investment amounts, instead requiring credit unions to develop and follow policies and agreements to ensure the soundness of each credit union’s loan participation investments. He noted that the Commission received no comments on the proposed changes.

After a brief discussion Mr. Gilman moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.805** as

previously published in the *Texas Register*. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(e) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC 91.901 Concerning Reserve Requirements. Commissioner Feeney noted that the proposed amendments provide for the development of a financial plan for credit unions that are unable to meet the required reserve transfer for three consecutive quarters. He indicated that the Commission received no comments on the proposed changes.

After a short discussion, Mrs. Stewart moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.901** as previously published in the *Texas Register*. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(f) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed New Subchapter K of 7 TAC Chapter 91. Concerning Credit Union Development Districts. Commissioner Feeney noted that the seven new rules were necessary to implement the provisions of House Bill 1626. He noted that the Commission received no written comments on the proposed new rules.

After a brief discussion, Mr. Gilman moved to recommend that the Commission adopt the proposed new **7 TAC Sections 91.2000, 91.2001, 91.2002, 91.2003, 91.2004, 91.2005, and 91.2006** as previously published in the *Texas Register*. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(g) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed New 7 TAC 97.206 Concerning Posting of Certain Contracts and Enhanced Contract and Performance Monitoring. Commissioner Feeney noted that the new rule was proposed to meet the requirements imposed by Senate Bill 20. He noted that the Commission received no written comments on the proposed new rule. This rule requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements.

After a short discussion, Mr. Tuma moved to recommend that the Commission adopt the proposed new **7 TAC Section 97.206** as previously published in the *Texas Register*. Mr. Gilman seconded the motion and the motion was unanimously adopted.

D. NEW BUSINESS

(a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Part 6, Chapter 91, Subchapter O (Relating to Trust Powers) in its Entirety. Commissioner Feeney reported that Section 2001.39, Government Code, requires that the Commission 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. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review of each rule. He indicated that staff had reviewed Chapter 91, Subchapter O and is recommending that no changes be made to 7 TAC Sections 91.6001, 91.6002, 91.6003, 91.6004, 91.6005, 91.6006, 91.6007, 91.6008, 91.6009, 91.6010, 91.6011, 91.6012, 91.6013, 91.6014, and 91.6015 at this time.

After a brief discussion, Mrs. Stewart made a motion to recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.6001, 91.6002, 91.6003, 91.6004, 91.6005, 91.6006, 91.6007, 91.6008, 91.6009, 91.6010, 91.6011, 91.6012, 91.6013, 91.6014, and 91.6015** continue to exist and that the rules be readopted without change. Mr. Gilman seconded the motion and the motion was unanimously adopted.

Commissioner Feeney suggested that the Committee discuss the next two agenda items together. Both of the proposals deal with field of membership issues and it would facilitate the discussion if they were discussed as one proposal.

Committee Member Yusuf Farran arrived at 3:04 p.m.

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

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

Commissioner Feeney indicated that these proposals represent an attempt by the Department to stimulate discussion and engage interested persons in helping develop appropriate amendments that will fulfill both the public policy considerations and modernize the field of membership rule. He noted that with respect to Rule 91.101 the amendments will revise and update the characteristics used to determine if a unifying factor among a group of persons satisfies the requirements. In addition, the proposal clarifies that only a credit union owned, deposit-taking ATM is included in the definition of office.

Commissioner Feeney indicated that the proposed amendments to Rule 91.301 would expand the local service area requirement to a newly delineated market area with certain limitations. He noted that the proposal deletes the current restrictions on underserved communities and grants the Department authority to waive requirements in an effort to facilitate credit union services in those areas. Commissioner Feeney also explained that the proposal places certain obligations on credit unions who submits an application to expand their field of membership.

Chairman Vad opened the floor to the public for discussion.

- **Tim Adams, President, SPCO Credit Union.** Mr. Adams indicated that he liked many parts to the proposal. He expressed concerns with the subjective aspects associated with the affirmative duty to serve the field of membership. He noted that he would like to see more details and get a better understanding how would you prove affirmatively service to a group.
- **Suzanne Yashewski, Associate General Counsel, Cornerstone Credit Union League.** Concerning the rule itself, Ms. Yashewski conveyed the League's appreciation for the initial draft and indicated the League looks forward to working with the Department on the proposal.
- **Melodie Durst, Executive Director, Credit Union Coalition of Texas.** Concerning the rule itself, Mrs. Durst indicated that the Coalition did not have specific comments and was still trying to digest the proposals. She noted that the Coalition will work to facilitate credit union involvement in the rulemaking process and looks forward to working with the Department on the proposal.

- **Stephanie Sherrod, CEO, Texas Dow Employees Credit Union.** Ms. Sherrod commended the effort to promote growth within credit unions and keeping the state charter viable in comparison to the federal charters. She also indicated that she is looking forward to some refinements of the language and continued discussion.
- **Ed Zingleman, Texas Dow Employees Credit Union.** Mr. Zingleman questioned the need to eliminate a geographic community of interest that is defined as a 10 mile radius surrounding a credit union office(s). He indicated there is a considerable distance between town's offices in certain parts of Texas. Mr. Feeney indicated, in his opinion, a 10 mile radius around an office does not meet the clearly defined community of interest criteria.
- **Leon Ewing, President, Firstmark Credit Union.** Mr. Ewing questioned whether changes should also be made to Rule 91.301(f) relating to parity with federal credit unions. He indicated that if a federal credit union can expand its field of membership in a specific manner, state credit unions should have the same opportunity without the Department imposing safety and soundness consideration into the decision.
- Mr. Gilman questioned the language in the preamble related to smaller microbusinesses. He indicated that one of the tenets of safe lending is that you do not want all your business in one area for business lending, and the associational membership is a vehicle to allow credit unions the opportunity to address members who are not being served by other business lenders, and imposing new requirements on this vehicle could impact small lending. He also noted that the reality is the ability to join a credit union through an

online location and engaging in mobile banking so the proximity requirement could be outdated.

- Mr. Vad asked the committee members if the proposal adequately takes into account or the need to move the rule into the 21st century.

Mrs. Stewart indicated most members are doing their business online and to have a physical branch in every location could be costly and prohibitive. If there is a deposit-ATM at various locations, then the members can do everything else online and there is nothing else needed at this point.

- Mr. Tuma asked if a credit union's member business lending policies define its lending area as Houston, would members applying for loans may not be able to qualify for membership without the associational community of interest under the proposed rule.

After a very lengthy discussion, Mr. Tuma made a motion to recommend to the Credit Union Commission approve for publication and comment the proposed amendments to both **7 TAC Section 91.101** and **7 TAC Section 91.301**. Mr. Gilman seconded the motion, and the motion passed unanimously.

D. (d) Discussion of and Vote to Establish for Next Committee Meeting.
The next meeting is tentatively scheduled the day before the next Commission meeting.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 3:12 p.m.

Vik Vad
Chairman

Isabel Velasquez
Recording Secretary

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