



CREDIT UNION COMMISSION MEETING

Credit Union Department Building

914 East Anderson Lane

Austin, Texas

July 8, 2016

9:00 a.m.

AGENDA

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G. Executive Session – The Commission may go into Executive Session [close its meeting to the public] on any agenda item if appropriate and authorized by Section 551.074 of the Government Code	174

Adjournment

Meeting Recess: 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 MEMBERS

- ***Manuel “Manny” Cavazos, Chair***
- ***Allyson “Missy” Morrow***
- ***Beckie Stockstill Cobb***
- ***Yusuf E. Farran***
- ***Steven “Steve” Gilman***
- ***Sherri B. Merket***
- ***Kay Stewart***
- ***Gary D. Tuma***
- ***Vik Vad***

Legal Counsel

- ***Melissa Juarez***

Staff

- ***Harold E. Feeney***
- ***Robert W. Etheridge***
- ***Shari O. Shivers***
- ***Isabel Velasquez***

**FUTURE CREDIT UNION
COMMISSION MEETING DATES**

Friday, November 4, 2016

Friday, March 3, 2017

Friday, July 7, 2017

All regular scheduled meetings will begin at 9:00 a.m. unless notified differently.

If anyone has conflicts with the proposed dates, please contact Isabel Velasquez at (512) 837-9236.

B

CREDIT UNION COMMISSION MEETING MINUTES

Draft copies of the minutes for the March 4, 2016 meeting, and the corresponding follow-up action report, are located under **Tab B**.

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

RECOMMENDED MOTION: I move that the minutes of the Commission's regular meeting of March 4, 2016 be approved as presented.

**CREDIT UNION COMMISSION
MEETING MINUTES
MARCH 4, 2016**

A. CALL TO ORDER - ASCERTAIN A QUORUM – Chairman Manuel “Manny” Cavazos declared that a quorum was present and called the meeting to order at 9:10 a.m. at the Texas State Capitol Extension, Room E2.030, Austin, Texas, pursuant to Chapter 551 of the Government Code. Other members present included Beckie Stockstill Cobb, Yusuf Farran, Steven “Steve” Gilman, Sherri Merket, Allyson ‘Missy’ Morrow, Kay Stewart, Gary Tuma, and Vik Vad. Assistant Attorney General Zindia Thomas was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner and Shari Shivers, Assistant Commissioner and General Counsel. Chairman Cavazos appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**February 22, 2016, TRD#2016001358**).

- ❖ **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Chairman Cavazos invited public input on matters that were not scheduled items on today’s agenda for possible future consideration by the Commission. No public comments were received.
- ❖ **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES**
 - Chairman Cavazos inquired if there were any requests or motions to excuse an absence. There were none.
- ❖ **B. RECEIVE MINUTES OF PREVIOUS MEETING (October 16, 2015)**. The Chairman referred the members to the draft minutes contained

in the agenda packet. Mrs. Morrow moved for approval of the minutes of October 16, 2015 as presented. Mr. Tuma seconded the motion, and the motion was unanimously adopted.

C. COMMUNICATIONS

The Chairman referred members to the correspondence contained in the agenda packet. Commissioner Feeney noted the onsite consultation report from the State Office of Risk Management (SORM) and reported that SORM had no recommended actions for the Department. Mr. Feeney also called attention to the correspondence from SORM related to the Department's Continuity of Operation Plan. He pointed out that SORM had concluded that the Plan was well written and thorough and they had no recommendations for improvements.

D. COMMITTEE REPORTS

Rules Advisory Committee -- Mr. Vad, Rules Committee Chairman, reported on the Committee's public meeting held on March 3, 2016. He explained that the Committee had four recommendations for consideration by the Commission.

(a) Discussion of and Possible Vote to Withdraw the Proposed Amendments to 7 TAC Section 91.01 (Definitions and Interpretations) and 91.301 (Field of Membership) which were Previously Published in the Texas Register and Republish for Comment Revised Proposed Amendments to 7 TAC Section 91.301 (Field of Membership). Mr. Vad noted that based upon the wide divergence of comments received on the proposed amendments, it was the Committee's recommendation that the Commission formally withdraw the proposed amendments to 7 TAC Sections 91.101 and 91.301 that were previously published in the *Texas Register*.

(b) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.301 Concerning Field of Membership. Mr. Vad explained that the Committee was also recommending that the Commission approve for publication and comment some proposed new amendments to 7 TAC Section 91.301. He noted that the proposed amendments would (1) prescribe that political subdivisions that are within reasonable proximity of a credit union's office(s) as a presumptive "local service area"; and (2) fully implement the intent of HB 1626 related to geographic areas where there is a demonstrated need for credit union services.

(c) Discussion of and Possible Vote to Adopt the Completed Rule Review of 7 TAC Section 91.302 (relating to Election or Other Membership Vote by Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting); 7 TAC Section 91.310 (relating to Annual Report to Membership); and 7 TAC Section 91.315 (relating to Members Access to Credit Union Documents). Mr. Vad noted that the Committee had reviewed all of the rules in 7 TAC Part 6, Chapter 91, Subchapter C and it was the Committee's recommendation that the Commission find that the reasons for adopting Sections 91.302, 91.310 and 91.315 continue to exist and that these rules be readopted without changes.

(d) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 97.200 Concerning the Employee Training Program. Mr. Vad reported that during the 84th Legislative Session, HB 3337 was enacted, which established certain requirements for agency tuition reimbursement programs. He noted that in view of the new statutory requirements, it was the recommendation of the Committee that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 97.200 concerning employee training program.

Mr. Vad then made a motion, on behalf of the Rules Committee, that the Commission approve the Committee's four recommendations. Coming on a motion of a standing committee, a second was not needed and the motion passed unanimously.

E. UNFINISHED BUSINESS

(a) Discussion and Consideration of the Department's FY 2016 Financial Performance and Possible Vote to take Action on the Department's FY 2016 Budget to Include Additional Funding of \$34,636 for FY 2015 Carryover Obligations. Commissioner Feeney reported that fiscal year-to-date revenues totaled \$1,974,728, which is \$297 more than the budgeted amount. He also noted that the contingency fund reserves as of August 31, 2015 were over the established cap by \$411,754 and that those excess funds had been used to reduce the operating fees collected from credit unions during this fiscal year. In addition, he indicated that during the first five months of the fiscal year the Department had spent \$1,379,168 to operate the agency, which is less than the amount budgeted for this period. Mr. Feeney did point out two significant budget variances:

- (1) In-state travel is over budget by approximately \$17,200; and
- (2) Professional Services and Fees is over budgeted by \$21,000.

When respect to the Professional Services and Fees variance, Mr. Feeney explained that during FY 2015 the Department had two information technology projects that were authorized and obligated but had not been completed by the end of the fiscal year (Website refresh \$8,365 and SharePoint Electronic Document Repository \$48,800). He noted that both projects were fully funded in FY 2015 (\$57,165), but only \$22,529 of the work was actually completed in that fiscal year leaving an unpaid obligation of \$34,636. Commissioner Feeney further clarified that although he believed it was the intent of the Commission to allow contractually obligated funds and the associated budget authority that had not been

closed by the end of the fiscal year to be automatically carried over to the next fiscal year, it appeared that the Commission's Policies Manual requires any budget revisions that increase the overall Department budget to receive the prior approval of the Commission. Accordingly, the Department was seeking the Commission's favorable consideration of a \$34,636 revision to the FY 2016 budget.

After a brief discussion, Mrs. Merket moved that the Commission approve the \$34,636 increase in the FY 2016 budget and authorize the Department to expend the necessary FY 2015 funds to cover the year-end carryover obligations. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(b) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department. Commissioner Feeney noted that while there are a small number of credit unions experiencing a combination of financial and operational challenges, overall Texas state credit union system's performance in calendar year 2015 continued to improve and, in general, were in line with the current economic conditions. Further, he explained that at December 31, 2015 there were 185 state-chartered credit unions with assets totaling \$34.9 billion which is an increase of \$2.5 billion since December 31, 2014 with an annualized growth rate of 10.4%. Loans totaled \$24.3 billion which is an increase of \$2.3 billion with an annualized growth rate of 10.4%. Shares totaled \$30.3 billion which is an increase of 7% since December 31, 2014. The credit unions average loan delinquency ratio was .67% as of December 31, 2014 compared to .76% at December 31, 2015. During calendar year 2015, 31 credit unions reported net operating losses. These credit unions reported aggregate negative net earnings of \$5.3 million. The remaining 154 credit unions reported aggregate net income of \$297.7 million.

After a brief discussion, no formal action was taken by the Commission.

F. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Approve and Authorize the Submission of the Department's Annual Internal Risk Assessment Report as Required by Section 2102, Government Code. Commissioner Feeney noted that Section 2102.013 of the Texas Government Code requires certain state agencies that receive appropriated funds to conduct a formal risk assessment each year and submit the assessment to the State Auditor's Office. He noted that since becoming an SDSI agency, the Department had voluntarily continued compliance with this requirement. Mr. Feeney further indicated that staff had completed the internal risk review for 2016 and had prepared a written assessment of the risks along with the controls the Department has in place to mitigate those risks for submission to the State Auditor's Office.

After a brief discussion, Mrs. Morrow moved that the Commission approve the Department's Internal Risk Assessment Report for 2016 and authorize its submission to the State Auditor's Office. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Take Action to Approve the Proposed Amendments to the Commission's Policies Manual, as Part of its Annual Policy Review, to Revise the Ethics Standards Policy to Include an Annual Disclosure and Prohibition of Certain Contracts Requirement, to Update the Budget Policy related to Year-End Carryover of Legally Obligated Balances (Payables) and to Adopt a New Second Amendment Weapons Policy. Mr. Feeney indicated that in accordance with its Policy, the Commission is required to review its policies manual at least once each year. He noted that in preparation for that review, Staff has studied the various

policies and is suggesting that the Commission consider changes to Sections XV and XVIII and also add a new Second Amendment Weapons Policy in Section XX.

After a short discussion, Mr. Vad moved that the Commission approve the proposed changes to the Commission's Policies Manual as recommended by staff. Mr. Tuma seconded the motion and the motion was unanimously adopted.

Following the discussion of a Second Amendment Weapons Policy, the Commission began deliberation on whether to expressly prohibited persons who are licensed under Chapter 411, Subchapter H, of the Texas Government Code from openly carrying handguns at Commission meetings. After a brief discussion, Mr. Gilman moved to table the discussion to provide additional time for the Commission to consider the potential ramifications. Mrs. Cobb seconded the motion and the motion to table was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Approve and Authorize the Submission of the Department's Strategic Plan for Fiscal Years 2017-2021. Commissioner Feeney reported that that Section 2056.002 of the Government Code requires that every two years each agency must submit a formal strategic plan that covers a prescribed 5-year horizon. He noted that proposed FY 2017-2021 Strategic Plan summarizes the analysis of the internal and external environment impacting the Department and credit unions, and highlights the agency's four strategic goals and supporting strategic objectives. Mr. Feeney highlighted the plan's ten major initiatives and expressed gratitude for the time, talent and expertise of the Credit Union Working Group. He noted that the ideas,

input, and enthusiasm of the Credit Union Working Group were most helpful and assisted staff in making valuable improvement to the proposed plan.

After a lengthy discussion, Mrs. Morrow moved that the Commission approve the proposed Strategic Plan for fiscal years 2017-2021 and authorize its submission in the appropriate format as prescribed by the Governor and the LBB. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration, and Possible Vote to Approve Proposed New Parameters for the Department's Overnight Travel Stipend. Commissioner Feeney explained that back in 2007 (80th Regular Session), the Legislature gave the Department authority to pay an overnight travel stipend for any overnight stays in excess of 60 days out per fiscal year. At that time, no moneys were appropriated for the stipend so the payment of any stipend was predicated on the Department's ability to reduce other expenses so that sufficient funds were available at the end of the fiscal year. He noted when the Department was designated as a SDSI agency in FY 2010, the Commission incorporated the same overnight travel stipend parameters in the budget assumptions. Mr. Feeney further noted that in an effort to encourage retention and better recognize the demands and impositions that high travel imposes on examiners and their families, the Department was suggesting that the Commission consider some modifications to stipend parameters. Specifically, he suggested that Commission may want to consider: (1) creating a budget item each year for the travel stipends and (2) increase the current travel stipend cap from \$2,500 to \$5,000 for any examiner with overnight travel status in excess of 104 eligible nights.

After a brief discussion, Mr. Vad moved that the Commission direct that funding for the overnight travel stipend be a budgeted item beginning in FY 2017

and authorize the Department to pay an overnight travel stipend for any overnight stays in excess of 50 days out per year based upon the policy parameters recommended by staff. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

(e) Discussion, Consideration, and Possible Vote to Adopt the General Budget Assumptions and Parameters to be used in Guiding the Development of the Department's FY 2017 Budget. Mr. Feeney reported that the Finance Code Section 16.003 gives the Commission exclusive responsibility for approving the Department's budget each year. He noted that the budget is scheduled to be adopted at the next meeting and that staff had drafted suggested budget guidelines for the Commission's consideration.

After a brief discussion, Mrs. Merket moved that the Commission adopt the proposed budget assumptions and parameters for FY 2017 as recommended by Staff. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(f) Discussion, Consideration, and Possible Vote to Adopt Resolutions Commemorating Fellowship Credit Union, Intercorp Credit Union, Members Choice Credit Union, NCE Credit Union and Pasadena Postal Credit Union for their Contributions to the Citizens of Texas on the Respective Milestone Anniversary Dates of their Origin. Commissioner Feeney noted that in accordance with the provisions of the Commission's Policies Manual, the Commission may adopt resolutions honoring credit unions for reaching certain milestones dates. In accordance with the criteria detailed in the policy, staff was presenting five resolutions for the Commission's consideration.

After a short discussion, Mrs. Merket moved that the Commission adopt the Resolutions Commemorating **Fellowship Credit Union, Intercorp Credit Union, Members Choice Credit Union, NCE Credit Union and Pasadena Postal Credit Union** for their Contributions to the Citizens of Texas on the Respective Milestones Anniversary of their Origin and that a copy of the appropriate resolutions be mailed to the credit unions. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

G EXECUTIVE SESSION—Mr. Cavazos stated that the Commission would be entering into Executive Session as provided under Section 551.074 of the Government Code, for the purpose of discussing certain personnel issues related to consideration of the appointment of Robert Etheridge as the new Deputy Commissioner. The Commission entered into Executive Session at 10:27 a.m. and reconvened in open session at 10:29 a.m.

Chairman Cavazos noted that no final action, decision, or vote on matters deliberated during the Executive Session was made by the members.

H. OTHER BUSINESS Vote on Matters Discussed in Executive Session:

(a) **Discussion and Possible Vote to Approve the Appointment of Robert Etheridge as the new Deputy Commissioner.** Mr. Farran made a motion to approve the appointment of Robert Etheridge as the new Deputy Commissioner. Mr. Tuma seconded the motion and the motion passed unanimously.

(b) **Next Commission Meeting** – Chairman Cavazos reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for July 8, 2016 at 9:00 a.m. in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chairman Cavazos adjourned the meeting at 10:33 a.m.

Manuel “Manny” Cavazos
Chair

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

DRAFT

FOLLOW-UP ACTION REPORT CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 06-17-16)
<u>March 4, 2016</u>		
7 TAC, Section 91.101 Definitions and Interpretations	Published in <i>Texas Register</i> as a formally withdrawn rule	Published in <i>Texas Register</i> on 03-18-16
7 TAC Section 91.301 Field of Membership	Published in <i>Texas Register</i> as a formally withdrawn rule	Published in <i>Texas Register</i> on 03-18-16
7 TAC Section 91.301 Field of Membership	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 03-18-16
7 TAC Sections 91.302 Election or Other Membership, 91.310 Annual Report to Membership, and 91.315 Members Access to Credit Union Documents	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 03-18-16
7 TAC Section 97.200 Employee Training Program	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 03-18-16

C

COMMUNICATIONS

All other communication items relevant and material to the meeting are included under the appropriate tabs.

RECOMMENDED ACTION: No formal action is anticipated to be taken by the Commission. The correspondence is included for your consideration and direction.



NCUA Media Release

NCUA Returns Control of Texans Credit Union to Members

ALEXANDRIA, Va. (June 17, 2016) – Texans Credit Union of Richardson, Texas, is once again under the control and direction of its members, the National Credit Union Administration announced today.

“This is a real success story, and much of the credit goes to the hard work of Texans’ leadership team, credit union staff and its members,” NCUA Board Chairman Rick Metsger said. “Working collaboratively with the agency, Texans’ leadership and staff restored their credit union’s financial health, revamped operations and provided critical services to members. As a result, the credit union is now on a sound foundation.”

NCUA placed Texans into conservatorship in April 2011. Working in collaboration with NCUA and the Texas Credit Union Department, Texans’ new management team saved their credit union from certain failure. The conservatorship was successful due to the unified efforts to carefully and deliberately mitigate exposure and risk from troubled assets, improve lending controls, revitalize operations, and improve operating efficiencies. Texans’ net worth position grew by more than \$100 million since the end of 2011 through very strong earnings.

Texans is the first federally insured credit union to emerge from NCUA conservatorship in 2016.

Chartered in 1953 and federally insured since 1972, Texans is a full-service credit union with more than 111,000 members and assets of more than \$1.5 billion. Texans provides financial services to people residing in the counties of Dallas, Collin, Rockwall, Travis and Williamson, Texas, through its 13 branches and participation in the CO-OP credit union network.

NCUA is the independent federal agency created by the U.S. Congress to regulate, charter and supervise federal credit unions. With the backing of the full faith and credit of the United States, NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of more than 103 million account holders in all federal credit unions and the overwhelming majority of state-chartered credit unions. At MyCreditUnion.gov and [Pocket Cents](#), NCUA also educates the public on consumer protection and financial literacy issues.

- NCUA -



Date: June 1, 2016
To: State Agency Heads
From: Governor Greg Abbott
Comptroller Glenn Hegar

RE: New Emergency Leave Policy

It is our understanding the Texas Legislature intends to address the issue of employee leave during the upcoming legislative session. Consequently, during the interim, we write to announce a new policy regarding the use of employee leave. Specifically, this policy directs state agencies to refrain from using emergency or other leave for the purposes of severance or settlement with departing or departed state employees.

Pursuant to this directive, the use of emergency leave, administrative leave or other mechanisms to continue paying state employees who have ceased to work will be prohibited. All agencies subject to the direction of the governor must not make such payments to departing or departed employees. This direction does not prohibit the payment of earned time to departing employees as authorized by law.

The Office of Comptroller of Public Accounts will verify adherence to this policy by reviewing emergency leave determinations on a post-payment audit basis. Agency documentation of emergency leave determinations must contain a statement by the agency head or other authorizing official that the leave is not being used in a manner precluded by this directive.

This directive will remain in place until the Texas Legislature has an opportunity to review this matter and enact legislation regarding the use of employee leave.



May 9, 2016

Mr. Harold Feeney, Commissioner
Credit Union Department
914 E. Anderson Lane
Austin, Texas 78752

Subject: Engagement Letter for an Audit of Self-directed, Semi-independent Agencies –
Credit Union Department

Dear Mr. Feeney:

The State Auditor's Office will be auditing the Credit Union Department (Department). The audit objectives are to:

- Verify the accuracy of certain financial and performance data and the effectiveness of related controls at selected self-directed, semi-independent agencies.
- Evaluate the agencies' processes for setting fees and penalties.

Our work will include the automated systems and processes that support the functions being audited. We will conduct the audit in accordance with generally accepted governmental auditing standards.

The audit is currently in the planning phase, and we are gathering information to help us understand Department operations. To avoid duplicating audit efforts, we will coordinate our work with the Department's Assistant Commissioner and General Counsel. The State Auditor's Office also has developed an engagement expectations memo to document what the Department can expect from the State Auditor's Office and what the State Auditor's Office can expect from the Department (see attachment). We will discuss this memo at the entrance conference. Audit fieldwork is tentatively scheduled from May 2016 to August 2016. We expect to release the audit report in September 2016.

In the interest of facilitating the audit, the State Auditor's Office plans to use a desktop screen-sharing tool to obtain and observe audit documentation in limited circumstances. The desktop screen-sharing tool is a secure communication tool that is housed and operated by the State Auditor's Office, and it does not involve third-party or "cloud" services. While the use of that tool is not required, if the Department chooses to use that tool, your staff will not need to install executable programs because the desktop screen-sharing tool is entirely accessible through a standard Internet browser.

We will meet periodically with the Department's management to discuss interim and final audit results. Before releasing the report, we will provide management with a confidential draft and will request formal written responses. These responses should objectively address

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Mr. Harold Feeney, Commissioner
Credit Union Department
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the audit results and include a corrective action plan, if necessary. The responses should be written on Department letterhead and submitted to the State Auditor's Office. Generally, the Department's management will have 10 working days to provide responses. However, the response time may be fewer than 10 working days, based on the significance of any issues identified during the engagement. The published, public audit report will include management's formal responses.

Our office applies auditing standards, which emphasize that auditors should exercise professional skepticism and increased awareness to detect potential noncompliance, fraud, and abuse. As a result, our interviews will include specific questions to help us assess fraud risk at the Department. In addition, to help in our risk assessment and gaining an understanding of the Department, our procedures will include a review of lawsuits filed against the agency. We will request a listing of filed lawsuits outstanding and those settled during a period to be determined. We will also request a representation letter signed by management at the end of this engagement that affirms management's responsibility for a number of key areas and affirms that the information provided to the audit team is complete and correct to the best of management's knowledge.

ESTIMATED CHARGES

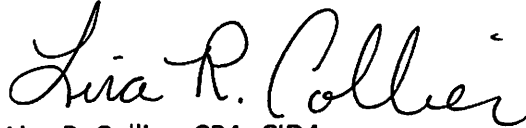
Section 16.004 of the Texas Finance Code requires the State Auditor's Office to enter into a contract with the Department to recover the costs incurred in performing this audit. The total amount of that contract shall not exceed \$50,000. The State Auditor's Office will apply its hourly billing rate of \$90 for audit work performed, and the actual amount to be paid by the Department will be based on the actual number of hours needed to complete the audit. The Department shall reimburse the State Auditor's Office within 30 days after receipt of the invoice. If the terms of this engagement letter as outlined above are acceptable, please indicate by signing below and returning this letter.

A copy of the most recent external quality control review report on the State Auditor's Office is available at <http://www.sao.state.tx.us/AboutSAO/peerreviews.html>. *Government Auditing Standards* require audit organizations to have an external review every three years. The most recent review found that the State Auditor's Office conducts audits in accordance with auditing standards.

Mr. Harold Feeney, Commissioner
Credit Union Department
May 9, 2016
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If you have any questions, please contact Michael Clayton (the audit manager overseeing the audit), Jerod Heine (the project manager directing the audit on-site), or me at (512) 936-9500. Our office looks forward to working with Department personnel over the next few months.

Sincerely,



Lisa R. Collier, CPA, CIDA
First Assistant State Auditor

Attachment

cc: Members of the Credit Union Commission
Mr. Manuel "Manny" Cavazos, IV, Chair
Ms. Beckie Stockstill Cobb
Mr. Yusuf E. Farran, P.E.
Mr. Steven "Steve" Gilman
Ms. Sherri Brannon Merket
Ms. Allyson "Missy" Morrow
Ms. Barbara "Kay" Stewart
Mr. Gary D. Tuma
Mr. Vik Vad
Mr. Robert Ethridge, Deputy Director, Credit Union Department
Ms. Shari Shivers, Assistant Commissioner and General Counsel, Credit Union
Department

Accepted:

Mr. Harold Feeney, Commissioner

Date

ENGAGEMENT EXPECTATIONS BETWEEN THE STATE AUDITOR'S OFFICE (SAO) AND THE CREDIT UNION DEPARTMENT

Introduction

The SAO and the Credit Union Department (Department) shall develop an engagement expectations memo to establish what the Department can expect from the SAO and what the SAO can expect from the Department.

The SAO will work with the Department's assistant commissioner to coordinate the audit work unless Department management specifically asks the SAO to do otherwise.

The SAO's Commitment to the Department

To achieve its mission to actively provide government leaders with useful information that improves accountability, the SAO is committed to the highest level of professional standards. The SAO will be professional, objective, fact-based, nonpartisan, nonideological, fair, and balanced in its approach.

The SAO performs its audits in accordance with generally accepted government auditing standards (GAGAS or the "Yellow Book" standards, which can be found at <http://www.gao.gov/assets/590/587281.pdf>).

Department's Rights

The Department has the right to:

- Share its concerns about the audited area(s) so that the auditors may consider expanding the scope of work.
- Be briefed on the status of the audit.
- Receive notice of audit findings and recommendations prior to issuance of the audit report.
- Have management's views concerning findings, conclusions, and recommendations included in the audit report.

Types of Audits

The work that the SAO performs is described in Texas Government Code, Chapter 321, and includes:

- Financial audits.
- Compliance audits.
- Economy and efficiency audits.
- Effectiveness audits.
- Special audits, investigations, and other projects approved by the Legislative Audit Committee.

Access to the Department's Information

The SAO must have unrestricted access to all personnel, records, files, internal audit working papers, and other confidential and nonconfidential information needed to conduct the audit. The SAO has the legal right to this access, as established in Texas Government Code, Sections 321.013(e) and 2262.154, and other law. Some of these records may include confidential and/or proprietary information.

With regard to these records:

- If records must be locked up while the SAO is on site, the Department will provide a suitable, secure storage space for the records.
- The Department will provide or facilitate access to the records the SAO requests in a timely manner. This may include notifying all Department staff of the expectation that they be candid with auditors and offer full disclosure when responding to SAO information requests.

Communication Between the SAO and the Department

The SAO is committed to maintaining constructive and continuing communication with audited entities. The Department agrees to place no restrictions on the communication between its staff and SAO auditors. To ensure there are no limitations on the scope of the engagement, the Department agrees that its staff will not be required to provide detailed write-ups or accounts of their communications with SAO auditors to Department management – as this could unintentionally result in restrictions on the communication. Routine communication between Department management and staff regarding the audit is expected.

If the SAO auditors become aware that Department staff are being required to provide detailed write-ups or reports back to management, we will evaluate whether this activity creates a scope limitation and, if so, the audit report will be modified to include that determination.

Communication may include the following (not necessarily in this order):

- Before beginning any new audit, the SAO seeks to **obtain information** and data from the Department. To obtain this information, the SAO will contact the assistant commissioner/general counsel regarding the audit's subject and objectives.
- The SAO will work with the Department's management or its designee to make arrangements for **work space**, telephones, computer access, security badges, and parking (if necessary) prior to SAO auditors' moving on site.
- The SAO may conduct **preliminary interviews** and obtain documentation to gain an understanding of the Department's processes before the entrance conference. In addition, the SAO will conduct interviews with various personnel at the Department throughout the audit.
- Management's designee will **notify staff** at the Department about the potential for the SAO to contact them.
- If gaining **access to systems** at the Department requires that SAO auditors follow special processes, management's designee will notify the SAO within two weeks of the date that the Department is notified concerning the audit.
- The SAO will provide the Department with an **engagement letter** informing the entity of the planned audit, its scope and objectives, how the audit will be conducted, and the report(s) to be produced. The SAO will address the engagement letter to the commissioner and provide copies to board members, the deputy director, and the assistant commissioner and general counsel. This memorandum will be attached to the **engagement letter**.
- The SAO will hold an **entrance conference** with officials of the Department at the start of an engagement to discuss (1) the reasons for the audit work; (2) information needs, including any special precautions necessary to protect data; (3) an estimate of how long the work will take, to the extent possible; and (4) the cost of the audit, if applicable.
- To ensure that auditing standards are met and that the audit scope is not limited, only invited employees of the Department will **attend interviews** or walk-throughs that the SAO conducts unless the SAO project team agrees to another arrangement prior to the interview or walk-through.

- Audit issues are normally handled by **discussing potential issues** with the relevant staff and supervisors of the Department. Issues that are not resolved are discussed at status update meetings.
 - The SAO will provide the Department with **periodic updates** on the status of the audit and potential issues according to a schedule that is jointly determined by the SAO and the Department.
 - SAO representatives attending these update meetings will include the audit manager, project manager, and team members as needed.
 - The Department representative(s) attending these update meetings should include the commissioner (or his designee) and the head of the audited area. Other individuals may be designated as needed.
 - The SAO will offer to hold an **exit conference** with management to discuss the final audit results.
 - Six weeks after the report is released, the SAO will provide you with an automated survey to obtain feedback about the audit. Completing this survey is voluntary.
-

Significant Changes

The SAO's plan for conducting the audit may change because of information reviewed during the course of the audit, staff turnover, or other resource issues. The SAO will inform the Department as soon as possible to communicate significant changes in:

- Project manager or other key team members.
 - Audit scope or objectives.
 - Project completion date.
-

Draft Reports and Department Comments

The SAO will discuss the preliminary findings and recommendations with the Department during the audit. At the conclusion of fieldwork, the SAO will send the Department the report draft for management's responses to findings and recommendations.

The Department will have the opportunity to provide responses within the required time frames. The typical allotted response time is two weeks. However, the response time may be less than two weeks, based on the significance of the issues identified.

The SAO will ask management of the Department to sign a representation letter for all audit engagements. This letter clarifies the roles of auditors and management and confirms that management has provided SAO auditors with all relevant and complete data.

Report Distribution

Draft reports are considered audit working papers under the Public Information Act. As such, they are not intended for public distribution.

Contacts

Primary contacts for each entity are listed below.

SAO:

Name	Title
Mr. Michael Clayton	Audit Manager
Mr. Jerod Heine	Project Manager

Department:

Name	Title
Mr. Harold Feeney	Commissioner
Mr. Robert Ethridge	Deputy Director
Ms. Shari Shivers	Assistant Commissioner and General Counsel
Ms. Janice Cantu	Accountant



CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Robert W. Etheridge
Deputy Commissioner

April 13, 2016

Sent electronically to: boardcomments@ncua.gov

Gerard Poliquin
Secretary to the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Dear Mr. Poliquin:

This letter is in response to the request for comment issued by the National Credit Union Administration (NCUA) with respect to the methodology used to determine the Overhead Transfer Rate (OTR). More specifically, NCUA is seeking input on the allocation formula that is used to determine which expenses are properly characterized as insurance related and charged to the National Credit Union Share Insurance Fund (NCUSIF) rather than collected through annual Operating Fees levied on federal credit unions.

The Department and the NCUA have long enjoyed a mutually respectful relationship driven by the realization that the Department and the NCUA are equally autonomous government agencies which, from their own vantage points, are best able to interpret statutes that their respective legislative bodies have instructed them to administer as well as determine the appropriate overall level of budget expenditures for their respective agency.

It is that sensitivity which has led the Department to be very selective about the comments it is filing with the NCUA in response to this published request; however, the Department believes that a strong argument can be made that the funds in the NCUSIF are not being managed in an equitable manner consistent with the spirit and intent of the Federal Credit Union Act (FCUA).

Following our review of the published OTR methodologies and processes, it would appear that NCUA purports to have virtually no safety and soundness responsibilities for the federal credit unions it charters. The asserted notion that all safety and soundness related costs are only insurance-related costs is not supported by a plain reading of the FCUA and is inherently implausible. Additionally, such an interpretation artificially inflates the costs to the NCUSIF.

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In 1970 when Congress approved and the President signed Public Law 91-206 (12 U.S.C. §§ 1781 – 1790) creating the NCUA as an independent agency, it was abundantly clear that the agency was charged with chartering, supervising, and examining federal credit unions. Although Congress did not specifically prescribe a mission for the NCUA, embedded within the provisions of the Legislation creating the agency was an obligation on the part of NCUA to ensure that federal credit unions operate in a safe and sound manner and comply with applicable laws. Another important aspect of this Legislation was that the establishment of the new independent agency would not cost the taxpayers a single penny nor result in any appropriations by Congress, since all of the operating cost of the agency would be borne by fees and assessments paid by federal credit unions.

Later, in 1970 Public Law 91-460 was also enacted, which created the NCUSIF and imposed an additional responsibility on NCUA to manage a program of deposit insurance for member accounts in federal credit unions and state-chartered credit unions which applied and qualified for insurance. The primary purpose of the new Fund was to insure the deposit of credit union members at insured credit unions, protect those depositors of insured credit unions and ultimately handle the resolution of any insured credit union that fails. No provisions in the Legislation implied or could be construed to supplant or transfer NCUA's responsibilities for the safety and soundness of federal credit unions to the NCUSIF. In fact, Congress created a new organizational component within the FCUA to more clearly differentiate the duties and responsibilities of the NCUA in its dual roles as the regulator and supervisor of federal credit unions and as administrator of the NCUSIF. Congress has also made clear that safety and soundness is also a responsibility of the chartering authority, including state chartering authorities. Thus, all safety and sound costs related to federal credit union examinations cannot be insurance related.

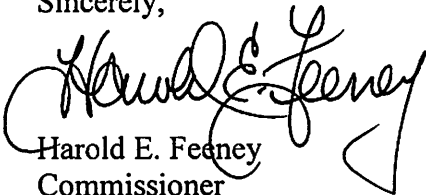
Although the FCUA specifically distinguishes the two separate roles being performed by NCUA, Congress seems to have envisioned a combined structure within NCUA to provide cost saving efficiencies. Contrary to the current OTR methodologies and processes, however, those efficiencies were designed to be accruing to the benefit of the NCUSIF and not NCUA as the regulator and supervisor of federal credit unions. In a deliberate act by Congress to preserve the resources of the NCUSIF, Congress not only directed NCUA to structure its regulatory examinations so they may be used by the NCUSIF (12 U.S.C. §1783), it also instructed the NCUSIF to rely on state regulatory examinations to the maximum extent feasible (12 U.S.C. §1782). A plain reading of the provisions of the FCUA seems to denote an intent for NCUSIF to be a supplement, not the primary source of funding for the NCUA budget.

Gerard Poliquin
Secretary to the Board
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As a result, it is the contention of this Department that the OTR methodologies are incompatible with the spirit and intent of the FCUA and result in the inequitable treatment of federally insured state chartered credit unions. We encourage NCUA to carefully consider modifying the methodology to ensure it does not inadvertently discriminate in any manner against state chartered credit unions by indirectly subsidizing federal credit unions.

Thank you for the opportunity to comment. If you have any questions about this letter please contact us.

Sincerely,



Harold E. Feeney
Commissioner

HEF/iv

D

COMMITTEE REPORTS

The Commission currently has two standing committees. Both the Rules Committee and the Commissioner Evaluation Committee will report on their respective activities and recommendations to the Commission

RECOMMENDED ACTION: The Department requests that the Commission accept the Committee reports as presented.

RULES COMMITTEE

D. (a) The Rules Committee will Report on its Activities and Recommendations to the Commission.

The Rules Committee is a standing committee of the Commission. It has been charged with the managing the review and development of Commission rules and, as appropriate, propose any legislative changes that may be necessary to preserve the attractiveness of a Texas charter.

COMMITTEE MEMBERS

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

The Rules Committee met on July 7, 2016, in a public meeting to discuss a number of items. The Committee will report on its activities for consideration and possible vote by the Commission.



CREDIT UNION COMMISSION

Rules Committee Meeting
Credit Union Department Building
914 East Anderson Lane
Austin, Texas

Thursday, July 7, 2016
1:00 p.m.

AGENDA

- I. Call to Order (1:00 p.m.) – Committee Chair Vik Vad
 - a. Ascertain Quorum
 - b. Appoint Recording Secretary
 - c. Invitation for Public Input Regarding Rulemaking for Future Consideration
- II. Receive and Approve Minutes of the Rules Committee Meeting of March 3, 2016
- III. Unfinished Business
 - a. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 91.301 Concerning Field of Membership
 - b. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 97.200 Concerning the Employee Training Program
- IV. New Business
 - a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Section 91.7000 (Certificates of Indebtedness)
 - b. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Section 91.8000 (Discovery of Confidential Information)
 - c. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve for Publication and Comment the Proposed Amendment to 7 TAC Section 91.709 Concerning Member Business Loans
 - d. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC, Part 8, Chapter 151 (relating to Home Equity Lending Procedures), Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property), and Chapter 153 (relating to Home Equity Lending)
 - e. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 8, Chapter 153 Concerning Home Equity Lending from Rule Review

IV. New Business (continued)

- f. Discussion of and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt the Fiscal Year 2017-2020 Rule Review Plan as Required by Section 2001.039, Government Code
- g. Discussion of and Possible Vote to Establish Tentative Date for Next Committee Meeting (November 3, 2016 at 1:00 p.m.)

Adjournment

Note: This is a meeting of the Rules Committee of the Credit Union Commission; however, there may be other members of the Credit Union Commission attending this meeting. Since there might be a quorum of the Commission attending this meeting of the Rules Committee, it is being posted as a meeting of the entire Commission.

Meeting Recess: 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.

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 any time 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, it provides an informal comment phase on any potential substantive amendments to all interested persons via its RuleRemarks blog on the Department's webpage.
5. After consideration of the informal comments, proposed amendments are prepared by staff and presented to the Rules Committee for review.
6. At a public meeting, the Rules Committee accepts public testimony on the 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.
7. The Committee's recommendation is presented to the Commission for consideration.
8. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
9. If the Commission approves the proposal for publication, it is transmitted to the *Texas Register* for publication as a "proposed" rule amendment.
10. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.

11. The commission may reconsider the rule any time 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.
12. 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.
13. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

FIELD OF MEMBERSHIP

D. (1) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 91.301 Concerning Field of Membership.

BACKGROUND: At its March meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.301. Four written comments were received in regards to the proposed amendments. Two commenters opposed the amendments. Of the two entities favoring the amendments, one had objections to various aspects of the proposal.

In general, the purpose of the amended rule would implement changes resulting from the Department's review of this section under Texas Government Code §2001.039. More specifically, the amended rule would expand the definition of local service area to generally consist of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by Texas Local Government Code §172.003(3). The amended rule also allows credit unions to include in their field of membership areas designated as a credit union development district, without regard to location. Once a credit union development district has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in that district.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

The Credit Union Commission (the Commission) adopts the amendments to 7 TAC §91.301 concerning a credit union's field of membership without changes to the text as published in the March 18, 2016 issue of the *Texas Register* (41 TexReg 2047). The amended rule will not be republished.

In general, the purpose of the amended rule adoption regarding 7 TAC §91.301 is to implement changes resulting from the Commission's review of this section under Texas Government Code §2001.039. Under Texas Finance Code §15.402, the Commission has legal authority to adopt rules concerning the character of field of membership. In adopting rules, the Commission may regulate and classify credit unions according to criteria that the Commission determines are appropriate and necessary to accomplish the purposes of Texas Finance Code Chapter 15 and the Texas Credit Union Act.

This rule adoption amends 7 TAC §91.301(a) to expand the definition of local service area to generally consist of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by Texas Local Government Code §172.003(3). The rule adoption also amends 7 TAC §91.301(e) to allow all credit unions to include in their field of membership areas designated by a credit union development district in accordance with Texas Finance Code Chapter 279 and 7 TAD Chapter 91, Subchapter K (related to Credit Union Development Districts), without regard to location. Once a credit union development district has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in that district.

In accordance with Texas Finance Code §15.402(b), the Commission finds that the amended rule will: (1) promote a stable credit union environment; (2) provide credit union members with convenient, safe, and competitive services; (3) preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and (4) promote or encourage economic development in this state. In order to promote a stable credit union environment and provide credit union members with competitive services, credit unions must be able to attract new members and expand consumer choice within the confines of the Texas Finance Code. The proposed rule would also increase consumer access to affordable financial services. At the same time, the proposed rule will keep the state charter competitive with recent National Credit Union Administration proposed field of membership rule changes and, thus, promote a stable credit union environment.

The Commission observes that an "underserved area" as defined in 7 TAC §91.101 (related to Definitions and Interpretations) is more limiting than the criteria prescribed for an area to be designated as a credit union development district in accordance with Texas Finance Code Chapter 279 and 7 TAC Chapter 91, Subchapter K (related to Credit Union Development Districts). While an "underserved area" could meet the standards necessary for designation as a "credit union development district," the reverse cannot be guaranteed. A credit union can only open an office that is reasonably necessary to provide services to the credit union's members. If the Department did not differentiate between credit union development districts and underserved areas, then if an area did not

meet the definition of underserved area, a credit union would not be able to meet its obligation to open a branch in the development district unless the geographic area was already included in the credit union's existing field of membership. This result would be inconsistent with the legislative intent with regard to credit union development districts. The Commission takes seriously its direction from the Legislature to administer and monitor a credit union development district program to encourage the establishment of branches of credit union in geographic areas where there is a demonstrated need for financial services.

The 30-day period ended April 18, 2016. The Commission received comments regarding the amended rule from four commenters: Texas Credit Union Association, Neighborhood Credit Union, Texas Bankers Association, and the Independent Bankers Association of Texas. Of the commenters, two opposed the rules and two persons favored the rule, with one of the commenters favoring the rule but suggesting ways to improve the rule and the other commenter favoring the rule with no suggested changes. A summary of comments relating to the amended rule and the Commission's responses follows.

One of the commenters suggested that there is no empirical evidence supporting the need for expanding the field of membership local service area to consist of one or more contiguous political subdivisions. As required by Texas Government Code §2001.039, the Commission performed its last comprehensive review of 7 TAC §91.301 in February 2012 (37 TexReg 1518). Over the past four years, the Credit Union Department (Department) has monitored and reviewed the rule in an effort to improve consistency and provide a basis for further clarification and modifications, if necessary. In response to this continued oversight, requests from credit unions, and the factors identified by Texas Finance Code §15.402(b), the Department identified issues that are the basis for the amendments.

The factual basis for the amendments to 7 TAC §91.301 include using objective and quantifiable criteria to determine the boundaries of a local service area. The presumptive local service area would generally consist of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by Texas Local Government Code §172.003(3).

The Department's experience indicates that there is ample uncertainty among applicants regarding the geographic limits of an applicant's local service area, particularly in view of the continued advancement in electronic delivery systems and alternative methods of providing credit union services. The amendments should make it easier for an applicant to determine and demonstrate whether a proposed group is within its local service area while at the same time maintaining the use of many of the most significant indicia of a community of interest. The Commission finds that a governmental unit below the State level is local and well-defined. A political subdivision also has strong indicia of community, including common interest and interaction among residents. Political subdivisions by their nature generally must provide residents with common services and facilities, such as education, police, fire, emergency, water, and medical services. Further, a political subdivision frequently has other indicia of a community of interest

such as major trade area, employee patterns, local organizations and/or a local newspaper. Such examples of commonalities are indicia that political subdivisions are local service areas where residents have a community of interest.

In accordance with Texas Finance Code §15.402(b), the Commission finds that the amended rule will: (1) promote a stable credit union environment; (2) provide credit union members with convenient, safe, and competitive services; (3) preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions; and (4) promote or encourage economic development in this state. . In order to promote a stable credit union environment and provide credit union members with competitive services, credit unions must be able to attract new members and expand consumer choice within the confines of the Texas Finance Code. The proposed rule would also increase consumer access to affordable financial services. At the same time, the proposed rule will keep the state charter competitive with recent National Credit Union Administration proposed field of membership rule changes and, thus, promote a stable credit union environment.

Two commenters suggested that the definition of "political subdivision" as it relates to using one or more contiguous political subdivisions as a presumptive local service area is either too broad or would allow credit unions unfettered entrée to designating the entire state and portions of other states as their local service area. The Commission disagrees and declines to revise the rule as the commenters suggest.

The Department's experience has been that local service areas can come in various population and geographic sizes. While the term 'local service area' does imply some limit, the Legislature has directed the Commission in Texas Finance Code §15.402 to establish the criteria for the character of field of membership that are consistent with the Texas Credit Union Act. While political subdivisions below the state level have historically met the definition of a local service area, nothing precludes a larger area comprised of multiple political jurisdictions from also meeting the regulatory definition. There is no statutory requirement or economic rationale that compels the Commission to authorize only the smallest local service area in a particular region. The Commission believes that one or more contiguous political subdivisions that are within reasonable proximity of a credit union's office(s) should be a presumptive local service area. The Commission emphasizes that the amended rule would not permit an individual to qualify remotely for membership in a credit union based on electronic access to it from outside its local service area.

With respect to the notion that a credit union could theoretically open sufficient offices to effectively obtain the entire state as its local service area, the Commission notes that in Texas Finance Code §122.012, the Texas Credit Union Act requires that any new office must be reasonably necessary to provide services to the credit union's members. Opening offices in areas that cannot be supported by a credit union's members and those persons currently eligible for membership in the credit union's existing field of membership would be inconsistent with the statutory provision.

It depends on the facts but, conceptually, the Commission acknowledges that under the proposed rule a local service area could cross state jurisdictional boundaries. It should be pointed out, however, that any Texas-chartered credit union wishing to actually expand its field of membership into another state would be required to comply with that state's field of membership requirements. Nothing in the amended rule would override the authority of the other state to control and/or restrict the expansion activities of a Texas-chartered credit union. Accordingly, opening an office simply to facilitate an expansion of a credit union's field of membership would be impermissible under Texas Finance Code §122.012.

One commenter suggested that the term "reasonable proximity" should be defined. The Commission disagrees and declines to revise the rule as the commenter suggests. The Commission's view is that previous versions of 7 TAC 91.301(a) have contained the reasonable proximity term for years and the rule adequately sets forth the requirement that reasonable proximity should be a geographic limitation. That is, any group to be added to a credit union's field of membership must be within reasonable proximity geographically to the credit union or, stated another way, within the local service area of the credit union. By establishing a presumptive local service area, the Commission believes it has established a reasonable objective and quantifiable standard for the reasons enumerated above.

One commenter recommended that a "digital branch" should be added to the definition of office location. Although the Commission agrees there are technological advances that have allowed for increased convenience in communication and transactions between customers and credit unions, it declines to revise the definitions rule as the commenter suggests. The definition of "office" is contained in 7 TAC §91.101 (related to Definitions and Interpretations) and any modifications to that rule are beyond the scope of this rulemaking.

One commenter suggested that the definition of local service area should be expanded. The commenter recommended that, in addition to the political jurisdiction enumerated in the Texas Local Government Code, political subdivision should be enlarged to include the entire State of Texas. The Commission disagrees and declines to revise the rule as the commenter suggests. The Commission believes that, to be consistent with legislative intent, a more circumspect and restricted approach to defining a credit union's service area is necessary. The Texas Credit Union Act is clear that credit unions are not allowed to provide credit union services to the general public. Community of interest requirements are meant as limiting factors, and permitting a credit union to designate the entire State of Texas as its local service area would circumvent the statutes and is beyond the Commission's scope of authority. Given the size and population of the State of Texas, action by the Legislature would be necessary before the Commission could consider allowing such a large political jurisdiction as a presumptive local service area.

One commenter suggested that the proposed rule does not need to amend 7 TAC §91.301(e). It was recommended that the term "underserved communities", as it is defined, is sufficient to cover all situations where there may be a demonstrated need for

financial services. Another commenter opposed “this broad expansion of the credit union field of membership because it has no apparent connection to HB 1626, 84th Session, and undermines the common bond requirement.” The Commission disagrees with both commenters and declines to revise the rule for the reasons outlined below. The Commission observes that an “underserved area” as defined in 7 TAC §91.101 (related to Definitions and Interpretations) is more limiting than the criteria prescribed for an area to be designated as a credit union development district in accordance with Texas Finance Code Chapter 279 and 7 TAC Chapter 91, Subchapter K (related to Credit Union Development Districts). While an “underserved area” could meet the standards necessary for designation as a “credit union development district” the reverse cannot be guaranteed. A credit union can only open an office that is reasonably necessary to provide services to the credit union’s members. If the Department did not differentiate between credit union development districts and underserved areas, then if an area did not meet the definition of underserved area, a credit union would not be able to meet its obligation to open a branch in the development district, unless the geographic area was already included in the credit union’s existing field of membership. This result would be inconsistent with the legislative intent with regard to credit union development districts. The Commission takes seriously its direction from the Legislature to administer and monitor a credit union development district program to encourage the establishment of branches of credit union in geographic areas where there is a demonstrated need for financial services.

One commenter favored the proposed rule and had no suggested changes. The Commission agrees with the commenter.

The amendments are adopted pursuant to Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.051, concerning membership.

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

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

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has its own community of interest and is within the credit union's local service area. In this section, local service area generally consists of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by TEX. LOCAL GOV'T CODE §172.003(3). For purposes of field of membership, the Group as a whole will be considered to be within the local service area when:

- (1) a majority of the persons in the Group live, work, or gather regularly within the local service area;
- (2) the Group's headquarters is located within the local service area; or
- (3) the persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area.

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

(b) Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:

- (1) members of the family or household of a member of the Group;
- (2) volunteers performing services for or on behalf of the Group;
- (3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;
- (4) spouses of persons who died while in the Group;
- (5) employees of the credit union;
- (6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.

(c) Multiple-groups.

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

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

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

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

(d) Overlap protection.

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

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

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

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

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

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

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

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

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

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

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

(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.

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

(e) Underserved communities.

(1) All credit unions may include underserved areas or areas designated as a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts) in their fields of membership, without regard to location. More than one credit union can serve the same underserved community.

(2) Once an underserved community has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the area under this subsection.

(3) A credit union desiring to add an underserved community must document that the area meets the applicable definition in §91.101 (relating to Definitions and Interpretations). In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as

well as requiring such reports before allowing a credit union to add an additional underserved area.

(f) Parity with Federal Credit Unions.

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

(g) Application.

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

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

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

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

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

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

EMPLOYEE TRAINING PROGRAM

D. (2) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC 97.200 Concerning the Employee Training Program.

BACKGROUND: At its March meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 97.200. No comments were received in regards to the proposed amendments.

In general, the purpose of the amended rule would implement the new statutory requirement (Texas Government Code, Section 656.048) that an agency head must authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code Title 7, §97.200, concerning employee training and education assistance programs without changes to the proposed text as published in the March 18, 2016 issue of the *Texas Register* (41 TexReg 2049).

The amendments make changes to reflect that Texas Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337(Act 2015, 84th Leg., R.S. Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. The amendments are adopted to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

The Commission received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

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

§97.200. Employee Training Program.

(a) Components of program. The employee training program for the department consists of one or more of the following components:

(1) Agency-sponsored training to include in-house training sessions and on-the-job training;

(2) Formal training program conducted through the National Credit Union Administration as administrator of the National Credit Union Share Insurance Fund.

(3) Seminars and conferences; and

(4) Formal course of study at an accredited institution of higher education.

(b) In order for the cost of training and the time related to that training to be reimbursed by the department, the employee must demonstrate that the course has direct applicability to the employee's job with the department. Attendance at an approved training session described in subsection (a)(1)-(3) will be considered part of the employee's normal work duties and will not require the employee to use accrued leave to attend.

(c) Requests to attend an external training program, seminar or conference pursuant to this section must be approved by the commissioner. Approval of a request is contingent upon availability of funds. If limited funds are available, and more than one employee wishes to participate, a decision regarding who will attend will be based upon the extent of their previous use of funds, the training's merit and its value to the department's operations.

(d) Continuing education courses. Continuing education courses required by licensing or certifying bodies for employees to maintain a professional license or designation will only be reimbursed if such courses relate directly to the employee's job duties with the department and there are funds available.

(e) Tuition reimbursement. The Commissioner must authorize in writing the reimbursement of tuition in accordance with this subsection.

(1) The department may reimburse full-time employees for part or all of tuition and required fees for formal courses of study described in subsection (a)(4) provided the eligibility criteria set forth below are met.

(A) An employee must have completed 24 consecutive months of full-time employment with the department prior to requesting approval to receive tuition reimbursement. However, the 24-month requirement may be waived if the commissioner finds that the employee needs a particular course to fulfill his or her work duties.

(B) An employee must be performing consistently above that normally expected or required and must have achieved an overall performance rating of at least 3.50 on the employee's most recent performance evaluation.

(C) An employee must not have been subject to formal disciplinary action for at least twelve months prior to requesting approval. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

(D) The course work must be related to a current or prospective duty assignment within the department.

(E) An employee, before the course begins, must agree in writing to the repayment requirement stated in this subsection.

(F) At the time of the request for approval to receive tuition reimbursement, comparable training must not be scheduled to be offered in-house or through the National Credit Union Administration during the period of time covered by the tuition reimbursement.

(G) The employee's participation must not adversely affect workload or performance.

(H) The employee must complete the course within the semester for which tuition reimbursement was requested.

(I) The employee must receive a passing grade in the course. A passing grade is a grade which will entitle the employee to receive credit for the course from the educational institution offering the course.

(2) Reimbursable costs. Criteria addressing the extent to which cost of tuition may be reimbursed are as follows:

(A) The maximum amount an employee may be reimbursed for an approved tuition reimbursement request is \$250 per semester, not to exceed \$500 per fiscal year. The maximum amount of reimbursement may be increased up to \$400 per semester for good cause shown upon approval by the commissioner.

(B) Reimbursable costs include tuition, related fees, and required textbooks and workbooks. Employees will not be reimbursed for auditing a course.

(C) Costs described in subparagraph (2)(B) will be paid to the employee at the completion of the course upon the employee submitting proof that the course was completed and a passing grade was received.

(3) Repayment. Should an employee separate from department service within 12 months of completion of the course, the employee must reimburse the department for all reimbursable costs expended by the department for that course in accordance with section 656.103 of the Texas Government Code (relating to Restrictions on Certain Training Costs). The commission may adopt an order waiving this requirement upon finding that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee.

(4) Prohibition on use of state resources. Employees may not use department equipment, such as computers, calculators or typewriters to complete course work.

MANDATORY RULE REVIEW

D. (3) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Sections 91.7000 (Certificates of Indebtedness).

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC Part 6, Chapter 91, Subchapter P and is recommending that no changes be made to **7 TAC Section 91.7000**.

Notice of review and a request for comments on the rule in this chapter was published in the April 22, 2016 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rule continue to exist.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, §91.7000 (Certificates of Indebtedness) as published in the April 22, 2016 issue of the Texas Register (41 TexReg 2973). The Commission proposes to readopt this rule.

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

The Department hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Department's legal authority to readopt.

The Commission received no comments with respect to this rule. The Department believes that the reasons for initially adopting this rule continue to exist. The Commission finds that the reasons for initially adopting §91.7000 continue to exist, and readopts this rule without changes pursuant to the requirements of Government Code, §2001.039.

DRAFT

Subchapter P. Other Forms of Equity Capital

§91.7000. Certificates of Indebtedness.

(a) General. No credit union may issue certificates of indebtedness pursuant to this section or amend the terms of such certificates unless it has obtained a written letter from the commissioner stating that the commissioner does not object (“non-objection letter”). All requirements of the provisions of this section must be met before a non-objection letter will be issued.

(b) Form of application; supporting information. Applications must be in the form prescribed by the commissioner and shall include all information and exhibits required by the application instructions.

(c) Requirements as to certificates. Certificates of Indebtedness issued pursuant to this section shall meet all of the following requirements:

(1) Form of certificate. Each certificate evidencing subordinated debt issued by a credit union pursuant to this section shall:

(A) Bear on its face, in bold-face type, the following legends:

(i) “This certificate is not a share account or deposit and it is not insured by the United States or any other insuring organization or fund”; and

(ii) “This certificate is not eligible for purchase by any credit union or a credit union service organization thereof without the prior written approval of the Credit Union Commissioner of the State of Texas.”

(B) Clearly state that the certificate –

(i) Is subordinated to all other claims of the credit union’s creditors;

(ii) Is totally unsecured; and

(iii) May not be used as collateral for any loan by the issuing credit union.

(C) Shall include within its terms the right of the issuing credit union to prepay the obligation, which shall, at a minimum, include the right to prepay any amount without premium or penalty any time during the fifteen months prior to the maturity date;

(D) Shall contain the following statement:

“Notwithstanding anything to the contrary in this certificate (or in any related documents); (i) if the NCUA or other insuring organization shall be appointed liquidating agent for the issuer of this certificate (“the issuer”) and in its capacity as such shall cause the issuer to merge with or into another credit union, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another credit union or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more credit unions, the NCUA or other insuring organization shall have no obligation, either in its capacity as liquidating agent or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligations represented by this certificate in whole or in part by any credit union or credit unions which results from any such merger or which has purchased or otherwise acquired from the NCUA or other insuring organization as liquidating agent for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the NCUA or insuring organization, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a credit union with or into which the issuer may have been merged, as described in this paragraph (A), and/or by one or more credit unions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the NCUA or other insuring organization as liquidating agent for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in

accordance with the procedures and priorities set forth in any applicable law. (ii) In the event that the obligation represented by this certificate is assumed in full by another credit union, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the NCUA or insuring organization assume all or a portion of the liabilities of the issuer, and payment or provision for shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, than any default caused by the appointment of a liquidating agent for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (iii) This certificate is not eligible to be purchased or held by any credit union or credit union service organization thereof. The issuer of this certificate may not recognize on its transfer books any transfer made to a credit union or any credit union service organization thereof and will not be obligated to make any payments of principal or interest on this certificate if the owner of this certificate is a credit union or any credit union service organization thereof.”

(2) Limitations as to term and prepayment.

(A) No certificate of indebtedness issued by a credit union pursuant to this section shall have an original period to maturity of less than seven years. During the first six years that such a certificate is outstanding, the total of all required sinking fund payments, other required prepayments, and required reserve allocations with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount or original redemption price, thereof multiplied by a fraction, the numerator of which is the number of years that have elapsed since the issuance of the certificate and the denominator of which is the number of years covered by the original period to maturity.

(B) No voluntary prepayment of principal shall be made and no payment of principal shall be accelerated without the approval of the commissioner if the credit union’s net worth ratio is below 6% or, if after giving effect to such payment, the credit union’s net worth ratio would fall below 6%.

(d) Offering circular. The credit union shall submit the proposed offering circular to the Department. The offering circular must state the following in bold print:

“These certificates have not been approved by the Texas Credit Union Department nor has the Texas Credit Union Department approved this offering circular.”

(e) Supervisory objection. Generally, the commissioner will not issue a non-objection letter where:

(1) The proposed issue fails to transfer risk away from the National Credit Union Share Insurance Fund or other insuring organization and onto the certificate holders.

(2) Information submitted in connection with the application or otherwise available to the Department indicates that the credit union will not be able to service the proposed debt. Evaluation of the issuer’s ability to service debt should be prospective, based upon the issuer’s business plan.

(3) The ratio of subordinated debt included as equity capital to the credit union’s net worth requirements exceeds one-third, after giving effect to the proposed issue.

(4) The proposed deployment of the proceeds of the proposed issue is contrary to the credit union’s business plan, is unrealistic in its assumptions, or is inconsistent with the principles of safety and soundness.

(5) The credit union has failed to comply with the terms and conditions imposed upon previous subordinated debt issuances, or has failed to comply with any outstanding enforcement action, written agreement or any other significant supervisory requirement.

(f) Additional requirements. The commissioner may impose on the credit union such requirements or conditions with regard to certificates or the offering or issuance thereof as the commissioner may deem necessary or desirable for the protection of purchasers, the credit union, the National Credit Union Share Insurance Fund, or other insuring organization, as the case may be.

(g) Limitation on offering period. Following the date of the issuance of a non-objection letter, the credit union shall have an offering period of not more than one year in which to complete the sale of the certificates of indebtedness issued pursuant to this section. The commissioner may in his discretion extend such offering period if a written request showing good cause for such extension is filed with the Department not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) Policies and Procedures. Before any offers or sales of the certificates are made on the premises of the credit union or its credit union service organization, the credit union shall submit to the Department a set of policies and procedures for such sale of certificates that is satisfactory to the Department.

(i) Records. A credit union shall establish and maintain certificate of indebtedness documentation practices and records that demonstrate the credit union appropriately administers and monitors certificate of indebtedness-related activities. The credit union's records should adequately evidence ownership, balances, and all transactions involving each certificate. The credit union may maintain records on certificate of indebtedness activities in any format that is consistent with standard business practices.

(j) Disclosures.

(1) In connection with the purchase of a certificate of indebtedness by a person from the issuing credit union or its credit union service organization, the credit union and/or the credit union service organization must disclose to the person that:

(A) The certificate of indebtedness is not a share or deposit;

(B) The certificate of indebtedness is not insured by the National Credit Union Share Insurance Fund or any other insuring organization;

(C) There is investment risk associated with the certificate of indebtedness, including the possible loss of value; and

(D) The credit union may not condition an extension of credit on a person's purchase of a certificate of indebtedness.

(2) The disclosures required by paragraph (1) above must be provided orally and in writing before the completion of the sale of a certificate of indebtedness. If the sale of a certificate of indebtedness is conducted by telephone, the credit union may provide the written disclosure required by paragraph (1) by mail within three business days beginning the first business day after the sale, solicitation, or offer.

(3) A credit union may provide the written disclosures required by paragraph (1) through electronic media instead of on paper, if the person affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the person may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(4) The disclosures provided shall be conspicuous and designed to call attention to the nature and significance of the information provided.

(k) Sales Activities. A credit union must, to the extent practicable:

(1) Keep the area where the credit union conducts transactions involving certificate of indebtedness physically segregated from areas where shares and deposits are routinely accepted from members;

- (2) Identify the area where certificate of indebtedness activities occur; and
- (3) Clearly delineate and distinguish those areas from the areas where the credit union's share- and deposit-taking activities occur.

(l) Referrals. Any person who accepts deposits from members in an area where such transactions are routinely conducted in a credit union may refer a member who seeks to purchase a certificate of indebtedness to a qualified person who sells that product only if the person making the referral receives no additional compensation for making the referral.

(m) Reports. Within 30 days after completion of the sale of the subordinated debt issued pursuant to this section, the credit union shall transmit a written report to the Department stating the number of purchases, the total dollar amount of certificates sold, and the amount of net proceeds received by the credit union. The credit union's report shall clearly state the amount of subordinated debt, net of all expenses that the credit union intends to have counted as equity capital. In addition, the credit union, shall submit to the Department, certification of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the certificates.

(n) Equity capital. When a certificate of indebtedness has a remaining maturity of 5 years, the amount of the certificates that may be considered equity capital shall be reduced by a minimum of 20% of the original amount of the certificate per year. The equity capital shall be reduced by a constant monthly amortization to ensure the recognition of subordinated debt is fully amortized when the certificate matures or is prepaid.

(o) Prohibited practices.

(1) A credit union may not engage in any practice or use any advertisement at any office of, or on behalf of, a credit union that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(A) the fact that a certificate of indebtedness a credit union sells or offers for sale is not insured by the National Credit Union Share Insurance Fund or other insuring organization;

(B) the fact that there is an investment risk, including the potential that principal may be lost and that the certificate may decline in value; or

(C) the fact that the approval of an extension of credit to a person by the credit union or credit union service organization may not be conditioned on the purchase of a certificate of indebtedness from the credit union or credit union service organization.

(2) No credit union shall directly or indirectly:

(A) employ any device, scheme or artifice to defraud,

(B) make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(C) engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any certificate of indebtedness.

Source: The provisions of this §91.7000 adopted to be effective March 14, 2004, 29 TexReg 2638; reviewed and readopted to be effective June 23, 2008, 33 TexReg 5352; reviewed and readopted to be effective July 18, 2012, 37 TexReg 4958.

MANDATORY RULE REVIEW

D. (4) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Sections 91.8000 (Discovery of Confidential Information).

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC Part 6, Chapter 91, Subchapter Q and is recommending that no changes be made to **7 TAC Section 91.8000**.

Notice of review and a request for comments on the rule in this chapter was published in the April 22, 2016 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rule continue to exist.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, §91.8000 (Discovery of Confidential Information) as published in the April 22, 2016 issue of the Texas Register (41 TexReg 2973). The Commission proposes to readopt this rule.

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

The Department hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Department's legal authority to readopt.

The commission received no comments with respect to this rule. The Department believes that the reasons for initially adopting this rule continue to exist. The Commission finds that the reasons for initially adopting §91.8000 continue to exist, and readopts this rule without changes pursuant to the requirements of Government Code, §2001.039.

DRAFT

Subchapter Q. Access to Confidential Information

§91.8000. Discovery of Confidential Information.

(a) **Policy.** The legislature has determined that certain information is confidential and, with limited exceptions, should not be disclosed. See Texas Finance Code, §126.002. Non-disclosure under this section protects the stability of credit unions by preventing disclosures that could adversely impact the institutions. Inappropriate disclosures can result in substantial harm to credit unions and to those persons and entities (including other financial institutions) that have relationships with them. For example, the department may criticize a credit union in an examination report for a financial weakness that does not currently threaten the solvency of the credit union. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of a "run," short-term liquidity problems, or volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the credit union. These failures lead to reduced access to credit and greater risk to depositors. Further, since specific loans may be criticized in an examination report, confidentiality of the information protects the financial privacy of borrowers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the credit union and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

(b) **Disclosure prohibited.** Pursuant to Finance Code §126.002, the department has an absolute privilege against disclosure of its confidential information. Discovery of confidential information from a person subject to §126.002 must comply with subsection (c) of this section. Only a person to whom confidential information has been released pursuant to §126.002 or this rule may disclose that information to another, and only in accordance with that section and this rule.

(c) **Discovery of confidential information.** A credit union, governmental agency, credit union service organization, service provider, or insuring organization that receives a subpoena or other form of discovery for the release of information that is confidential under §126.002 of the Act shall promptly:

- (1) notify the department of the request;
- (2) provide the department with a copy of the discovery documentation and, if requested by the department, a copy of the requested information; and
- (3) move for a protective order, or its equivalent under applicable rules of procedure.

In addition, prior to the release of confidential information, such credit union, governmental agency, credit union service organization, service provider, or insuring organization must obtain a ruling on its motion in accordance with this section. Confidential information may be released only pursuant to a protective order, or its equivalent, in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

- (A) the party seeking the information has a substantial need for the information;
- (B) the information is directly relevant to the legal dispute in issue; and
- (C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

(d) Discretionary filings by department. On receipt of notice under subsection (c) of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this section.

(e) Motion for protective order, or equivalent, and in camera inspection. The movant shall ask the court to enter an order in accordance with this section regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the order shall move for an in camera inspection of the pertinent information. Until subject to a protective order, or its equivalent, confidential information may not be released, and, if necessary, the party seeking an order shall request the court officer to deny discovery of such confidential information.

(f) Protective order or equivalent. An order obtained pursuant to the terms of this section must:

(1) specifically bind each party to the litigation, including one who becomes a party to the suit after the order is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the order;

(2) describe in general terms the confidential information to be produced;

(3) state substantially the following in the body of the order:

(A) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the order in whole or part;

(B) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the order and must insure that disclosure is limited to those persons specified in the order;

(C) confidential information subject to the order and all information derived there from may be used only for the purposes of the trial, appeal, or other proceedings in the case in which it is produced;

(D) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the term of the protective order;

(E) confidential information produced under the order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order;

(i) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under the attorney's supervision;

(ii) to a witness or potential witness in the case;

(iii) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the order and the party employing the expert agrees to be responsible for the compliance by its expert with this confidentiality obligation; and

(iv) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(F) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(G) a transcript, including a deposition transcript, that may include confidential information subject to non-disclosure is subject to the order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(H) Upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return all copies of every document subject to the order for which the counsel is custodian to the party that produced the confidential information; and

(I) Production of documents subject to the order does not waive a claim of privilege or right to withhold the documents from a person not subject to the order.

(4) Paragraph (3)(A), (B) and (E) - (H) of this subsection are subject to modification by the court for good cause before the conclusion of the proceeding, after giving the department notice and an opportunity to appear.

Source: The provisions of this §91.8000 adopted to be effective March 14, 2004, 29 TexReg 2638; reviewed and readopted to be effective June 23, 2008, 33 TexReg 5352, amended to be effective July 12, 2009, 34 TexReg 4513; reviewed and readopted to be effective July 18, 2012, 37 TexReg 4958.

MEMBER BUSINESS LOANS

D. (5) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Proposal and Publication for Comment Amendments to 7 TAC Section 91.709 Concerning Member Business Loans.

BACKGROUND: 7 TAC Section 91.709, Member Business Loans, was reviewed as a result of recent amendments adopted by the National Credit Union Administration (NCUA) to modernized its member business loans rule (12 C.F.R. Part 723) and provided federally insured credit unions with greater flexibility and autonomy to provide commercial and business loans to their members. NCUA's final rule will replace, on January 1, 2017, the existing prescriptive requirements with a broad, principles-based regulatory approach, with expanded requirements pertaining to policies, procedures, and oversight by credit union management and credit union directors. NCUA's final rule also provides that federally insured credit unions in a given state are exempted from compliance with 12 C.F.R. Part 723 if state supervisory authority administers a state commercial and member business loan rule for use by federally insured credit unions in that state, provided that the state rule at least covers all the provisions in 12 C.F.R. Part 723 and is no less restrictive (based on NCUA's determination).

States that currently have exemptions from the previous 12 C.F.R. Part 723 were grandfathered in NCUA's final rule. As a result, without action by the Commission, the grandfathered 7 TAC Section 91.709 will continue to require state chartered credit unions to comply with the extensive regulatory thresholds and limits and will place them at a competitive disadvantage to federally chartered credit unions when offering commercial and business loans to their members.

The proposal will provide credit unions parity, under Section 123.003 of the Texas Finance Code, with federal credit unions engaged in the business of making member business loans in Texas. In keeping with NCUA's "no less restrictive" requirement to obtain an exemption from the new 12 C.F.R. Part 723, the proposal closely tracks the provisions of NCUA's final rule and removes the current credit union requirements for collateral and security, equity, loans limits, and waiver processes, and replaces them with broad principles intended to permit credit unions to govern safe and sound member business lending as part of their commercial lending program.

Under the proposal, credit unions would be required to maintain and update written policies concerning the maximum amount of assets, credit underwriting standards, loan approval standards, loan monitoring standards and loan documentation standards. Credit unions would also be required to have qualified staff and commercial loan risk management systems. In addition, the proposed amendments contain prohibitions on certain types of commercial loans and contains an aggregate member business loan limit. The implementation of the proposal would be delayed until January 1, 2017 to coincide with the effective date of NCUA's new 12 C.F.R. Part 723.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

The Credit Union Commission (Commission) proposes amendments to Title 7 of the Texas Administrative Code, Section 91.709, relating to member business lending activities.

The amendments to the rule are proposed as a result of the adoption of federal regulations as discussed below. The proposed amendments will provide credit unions parity, under Texas Finance Code Section 123.003, with federal credit unions engaged in the business of making member business loans in Texas. The amendments will eliminate detailed collateral criteria and portfolio limits, and instead will focus on broad, yet well-defined, principles that clarify regulatory expectation for credit unions engaged in member business lending activities. The proposed amendments also distinguish between the broad commercial lending activities in which a credit union is authorized to engage, and the more narrowly defined category of member business loans subject to statutory aggregate limits in 12 U.S.C. §1757a. The proposed amendments clarify that, in addition to the other limitations set forth in the amendments, a credit union may not make a loan to a member or a business interest of the member if the loan would cause the aggregate amount of loans to the member and the member's business interests to exceed an amount equal to 10 percent of the credit union's total assets as provided by Texas Finance Code Section 123.003.

In general, the National Credit Union Administration (NCUA) has recently published a final rule to modernized its member business loans rule (12 C.F.R. Part 723) to provide federally insured credit unions with greater flexibility and autonomy to provide commercial and business loans to their members. The final rule amends NCUA's current regulatory requirements pertaining to credit union commercial lending activities by replacing the existing prescriptive requirements with a broad, principles-based regulatory approach. NCUA's final rule eliminates most of the regulatory thresholds and limits, and replaces those provisions with expanded requirements pertaining to policies, procedures, and oversight by credit union management and credit union directors. NCUA's final rule also provides that federally insured credit unions in a given state are exempted from compliance with 12 C.F.R. Part 723 if state supervisory authority administers a state commercial and member business loan rule for use by federally insured credit unions in that state, provided that the state rule at least covers all the provisions in 12 C.F.R. Part 723 and is no less restrictive (based on NCUA's determination).

States that currently have exemptions from the previous 12 C.F.R. Part 723 were grandfathered in NCUA's final rule. As a result, without action by the Commission, the grandfathered 7 TAC Section 91.709 will continue to require state chartered credit unions to comply with the extensive regulatory thresholds and limits and will place them at a competitive disadvantage to federally chartered credit unions when offering commercial and business loans to their members.

In keeping with NCUA's "no less restrictive" requirement to obtain an exemption from the new 12 C.F.R. Part 723, the proposed amendments closely track the provisions of NCUA's final rule and remove the current credit union requirements for collateral and security, equity, loans limits, and waiver processes, and replace them with broad principles intended to permit credit unions to govern safe and sound member business lending as part of their commercial lending program. Under the proposed amendments, the Commission requires credit unions to maintain and update written policies concerning the maximum amount of assets, credit underwriting standards, loan approval standards, loan monitoring standards and loan documentation standards. Credit unions

are also required to have qualified staff and commercial loan risk management systems. In addition, the proposed amendments contain prohibitions on certain types of commercial loans and contain an aggregate member business loan limit. The Commission proposes to delay implementation of the final rule until January 1, 2017 to coincide with the effective date of NCUA's new 12 C.F.R. Part 723.

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

Ms. Shivers also has determined that, for each year of the first five years the rule as proposed will be in effect, the public benefit will be greater clarity regarding the rule's requirements and significant regulatory relief for credit unions.

For each year of the first five years that the rule will be in effect, there will be no probable economic costs to persons required to comply with the rule as proposed, no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Shari Shivers, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@tud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

The amendments are proposed under the provision of the Texas Finance Code, Section 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 Texas Finance Code Section 123.003, which authorizes the Commission, in conjunction with the exercise of its specific rulemaking authority, to adopt rules reflecting the statutory right of a state credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

The specific sections affected by the amendment are Texas Finance Code, Sections 124.001 and 124.003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

§91.709. Member Business and Commercial Loans.

(a) Definitions. Definitions in TEX. FIN. CODE §121.002, are incorporated herein by reference. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) “Borrower” means a member or any other person named as a borrower, obligor, or debtor in a loan or extension of credit; or any other person, including, but not limited to, a comaker, drawer, endorser, guarantor or surety who is considered to be a borrower under the requirements of subsection (i) of this section concerning aggregation and attribution for commercial loans.

(2) “Commercial loan” means a loan or an extension of credit to an individual, sole proprietorship, partnership, corporation, or business enterprise for commercial, industrial, agricultural, or professional purposes, including construction and development loans, any unfunded commitments, and any interest a credit union obtains in such loans made by another lender. A commercial loan does not include a loan made for personal expenditure purposes; a loan made by a corporate credit union; a loan made by a credit union to a federally insured credit union; a loan made by a credit union to a credit union service organization; a loan secured by a 1- to 4-family residential property (whether or not the residential property is the borrower’s primary residence); a loan fully secured by shares in the credit union making the extension of credit or deposits in another financial institution; a loan secured by a vehicle manufactured for household use; and a loan that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balance plus unfunded commitments less any portion secured by shares in the credit union to a borrower, is equal to less than \$50,000.

(3) “Control” means a person directly or indirectly, or acting through or together with one or more persons who:

(A) own, control, or have the power to vote twenty-five (25) percent or more of any class of voting securities of another person;

(B) control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) have the power to exercise a controlling influence over the management or policies of another person.

(4) “Immediate family member” means a spouse or other family member living in the same household.

(5) “Loan secured by a lien on a 1- to 4-family residential property” means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(6) “Loan secured by a lien on a vehicle manufactured for household use” means a loan that, at origination, is secured wholly or substantially by a lien on a new and used passenger car or other vehicle such as a minivan, sport-utility vehicle, pickup truck, and similar light truck or heavy-duty truck generally manufactured for personal, family, or household use and not used as a fleet vehicle or to carry fare-paying passengers, for which the lien is central to the extension of credit. A lien is central to the extension of credit if the borrower would not have been extended

credit in the same amount or on terms as favorable without the lien. A loan wholly or substantially secured by a lien on a vehicle manufactured for household use if the estimated value of the collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(7) "Loan-to-value ratio for collateral" means the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements.

(8) "Member business loan" has the meaning assigned by 12 C.F.R. Part 723.

(9) "Net worth" has the meaning assigned by 12 C.F.R. Part 702.2.

(10) "Readily marketable collateral" means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(11) "Residential property" means a house, townhouse, condominium unit, cooperative unit, manufactured home, a combination of a home or dwelling unit and a business property that involves only minor or incidental business use, real property to be improved by the construction of such structures, or unimproved land zoned for 1- to 4-family residential use but does not include a boat, motor home, or timeshare property, even if used as a primary residence. This applies to such structure whether under construction or completed.

(b) Parity. A credit union may make, commit to make, purchase, or commit to purchase any member business loan it could make if it were operating as a federal credit union domiciled in this state, so long as for each transaction the credit union complies with all applicable regulations governing such activities by federal credit unions. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

(c) Commercial Loan Responsibilities and Operational Requirements. Prior to engaging in the business of making commercial loans, a credit union must address the responsibilities and operational requirements under this subsection:

(1) Written policies. A credit union must establish comprehensive written commercial loan policies approved by its board of directors instituting prudent loan approval, credit underwriting, loan documentation, and loan monitoring standards in accordance with this paragraph. The board must review its policies at least annually and, additionally, prior to any material change in the credit union's commercial lending program or related organizational structure, in response to any material change in the credit union's overall portfolio performance, or in response to any material change in economic conditions affecting the credit union. The board must update its policies when warranted. Policies under this paragraph must be designed to identify:

(A) the maximum amount of assets, in relation to net worth, allowed in secured, unsecured, and unguaranteed commercial loans and in any given category or type of commercial loan and to any one borrower;

(B) credit underwriting standards including potential safety and soundness concerns to ensure that action is taken to address those concerns before they pose a risk to the credit union's net worth; the types of commercial loans permitted; the trade area in which loans will be made; the size and complexity of the loan as appropriate to the size of the credit union; and the scope of the credit union's commercial loan activities;

(C) loan approval standards including consideration, prior to credit commitment, of the borrower's overall financial condition and resources; the financial stability of any guarantor; the nature and value of underlying collateral; environmental assessment requirements; the borrower's character and willingness to repay as agreed; and the use of loan covenants when warranted;

(D) loan monitoring standards including a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; the concentration of credit risk; and the risk management systems under subsection (d) of this section; and

(E) loan documentation standards including enabling the credit union to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identifying the purpose of each loan and source(s) of repayment; assessing the ability of each borrower to repay the indebtedness in a timely manner; ensuring that any claim against a borrower is legally enforceable; and demonstrating appropriate administration and monitoring of each loan.

(2) Qualified Staff. A credit union must ensure that it is appropriately staffed with qualified personnel with relevant and necessary expertise and experience for the types of commercial lending in which the credit union is engaged, including appropriate experience in underwriting, processing, performance evaluation, and loss mitigation. At a minimum, a credit union making, purchasing, or holding any commercial loans must internally have a senior management employee that has a thorough understanding of the role of commercial lending in the credit union's overall business model and establish risk management processes and controls necessary to safely conduct commercial lending as provided by subsection (d) of this section.

(3) Use of Third-Party Experience. A third party may provide the requisite expertise and experience necessary for a credit union to safely conduct commercial lending if:

(A) the third party has no affiliation or contractual relationship with the borrower;

(B) the third party is independent from the commercial loan transaction and does not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:

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

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

(iii) the third party is a credit union service organization and the credit union has a controlling financial interest in the credit union service organization as determined under generally accepted accounting principles.

(C) the actual decision to grant a commercial loan resides with the credit union; and

(D) qualified credit union staff exercise ongoing oversight over the third party by regularly evaluating the quality of any work the third party performs for the credit union.

(4) De Minimis Exception. The responsibilities and operational requirements described in paragraphs (1) and (2) of this subsection do not apply to a credit union if it meets all of the following conditions:

(A) the credit union's total assets are less than \$250 million;

(B) the credit union's aggregate amount of outstanding commercial loan balances (including any unfunded commitments, any outstanding commercial loan balances and unfunded commitments of participations sold, and any outstanding commercial loan balances and unfunded commitments sold and serviced by the credit union) total less than fifteen (15) percent of the credit union's net worth; and

(C) in a given calendar year, the amount of originated and sold commercial loans and the amount of originated and sold commercial loans the credit union does not continue to service, total fifteen (15) percent or less of the credit union's net worth.

A credit union that relies on this de minimis exception is prohibited from engaging in any acts or practices that have the effect of evading the requirements of this subsection.

(d) Commercial Loan Risk Management Systems.

(1) Risk Management Processes. A credit union's risk management process must be commensurate with the size, scope and complexity of the credit union's commercial lending activities and borrowing relationships. The processes must, at a minimum, address the following:

(A) use of loan covenants, if appropriate, including frequency of borrower and guarantor financial reporting;

(B) periodic loan review, consistent with loan covenants and sufficient to conduct portfolio risk management, which, based upon current market conditions and trends, loan risk, and collateral conditions, must include a periodic reevaluation of the value and marketability of any collateral, and an updated loan-to-value ratio for collateral calculation;

(C) a credit risk rating system under paragraph (2) of this subsection; and

(D) a process to identify, report, and monitor commercial loans that are approved by the credit union as exceptions to the credit union's loan policies.

(2) Credit Risk Rating System. The credit risk rating system must be a formal process that identifies and assigns a relative credit risk score to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score must be determined through an evaluation of quantitative factors based on the financial performance of each commercial loan and qualitative factors based on the credit union's management, operational, market, and business environment factors. A credit risk rating must be assigned to each commercial loan at the inception of the loan. A credit risk rating must be reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles.

(3) Independent Review. Periodic independent reviews should be conducted by a person who is both qualified to conduct such a review and independent of the function being reviewed. The review should provide an objective assessment of the overall commercial loan portfolio quality and verify the accuracy of ratings and the operational effectiveness of the credit union's risk management processes. A credit union is not required to hire an outside third party to conduct this independent review, if it can be done in-house by a competent person that is considered unconnected to the function being reviewed.

(e) Collateral and Security for Commercial Loans.

(1) Collateral. A commercial loan must be secured by collateral commensurate with the level of risk associated with the size and type of the commercial loan. The collateral must be sufficient to ensure the credit union is protected by a prudent loan-to-value ratio for collateral along with appropriate risk sharing with the borrower and principal(s). A credit union making an

unsecured commercial loan must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk of making an unsecured loan.

(2) Personal Guarantees. A credit union that does not require the full and unconditional personal guarantee from all principals of the borrower who have a controlling interest, as defined by subsection (a)(3) of this section, in the borrower must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

(f) Construction and Development Loans.

(1) Terms. In this subsection:

(A) "construction or development loan" means any financing arrangement to enable the borrower to acquire property or rights to property, including land or structures, with the intent to construct or renovate an income producing property, such as residential housing for rental or sale, or a commercial building, that may be used for commercial, agricultural, industrial, or other similar purposes. It also means a financing arrangement for the construction, major expansion or renovation of the property types referenced in this subsection. The collateral valuation for securing a construction or development loan depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed. A loan to finance maintenance, repairs, or other improvements to an existing income-producing property that does not change the property's use or does not materially impact the property is not a construction or development loan.

(B) "cost to complete" means the sum of all qualifying costs necessary to complete a construction project and documented in an approved construction budget. Qualifying costs generally include on- or off-site improvements; building construction; other reasonable and customary costs paid to construct or improve a project, including a general contractor's fees; other expenses normally included in a construction contract such as bonding and contractor insurance; the value of the land, determined as the sum of the cost of any improvements to the land and the lesser of appraised market value or purchase price; interest as provided by this subparagraph; project costs as provided by this subparagraph; a contingency account to fund unanticipated overruns; and other development costs such as fees and related pre-development expenses. Interest expense is a qualifying cost only to the extent it is included in the construction budget and is calculated based on the projected changes in the loan balance up to the expected "as-complete" date for owner-occupied non-income-producing commercial real property or the "as stabilized" date for income-producing real estate. Project costs for related parties, such as developer fees, leasing expenses, brokerage commissions and management fees, are included in qualifying costs only if reasonable in comparison to the cost of similar services from a third party. Qualifying costs exclude interest or preferred returns payable to equity partners or subordinated debt holders, the developer's general corporate overhead, and selling costs to be funded out of sales proceeds such as brokerage commissions and other closing costs.

(C) "prospective market value" means the market value opinion determined by an independent appraiser in compliance with the relevant standards set forth in the Uniform Standards of Professional Appraisal Practice. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two (2) prospective value opinions may be required to reflect the time frame during which development, construction, or occupancy occur. The prospective market value "as-completed" reflects the real property's market value as of the time that development is to be completed. The prospective market value "as-stabilized" reflects the real property's market value as of the time the real property is projected to achieve stabilized occupancy. For an income producing property,

stabilized occupancy is the occupancy level that a property is expected to achieve after the real property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar real properties.

(2) Policies. A credit union that elects to make a construction or development loan must ensure that its commercial loan policies under subsection (c) of this section include adequate provisions by which the collateral value associated with the project is properly determined and established.

(3) Establishing Collateral Values. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements. The collateral value depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed and is the lesser of the project's cost to complete or its prospective market value.

(4) Controls and Processes for Loan Advances. A credit union that elects to make a construction and development loan must have effective commercial loan policies and control procedures in place to ensure sound loan advances and that liens are paid and released in a timely manner. Effective controls should include segregation of duties, delegation of duties to appropriate qualified personnel, site inspections, line item construction budget approval and monitoring, and dual approval of loan disbursements. Records should be maintained that demonstrate whether remaining funds are adequate to complete the project. The records should be complete and subject to independent review under subsection (d) of this section.

(g) Commercial Loan Prohibitions.

(1) Ineligible borrowers. A credit union may not grant a commercial loan to the following:

(A) any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members;

(B) any person meeting the requirements of subsection (i) of this section concerning aggregations and attribution for commercial loans, with respect to persons identified in subparagraph (A) of this paragraph; or

(C) any director, unless the credit union's board of directors approves granting the loan and the borrowing director was recused from the board's decision making process.

(2) Equity Agreements and Joint Ventures. A credit union may not grant a commercial loan if any additional income received by the credit union or its senior management employees is tied to the profit or sale of any business or commercial endeavor that benefits from the proceeds of the loan.

(3) Fees. No director, committee member, volunteer official, or senior management employee of a credit union; or immediate family member of such director, committee member, volunteer official, or senior management employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any commercial loan made by the credit union. Employees, other than senior management, may be partially compensated on a commission or performance based incentive, provided the compensation is governed by a written policy and internal controls established by the board of directors. The board must review the policies and controls at least annually to ensure that such compensation is not excessive or expose the credit union to inappropriate risks that could lead to material financial loss. Loan origination employees are prohibited from receiving, in connection with any commercial loan made by the credit union, any compensation from any source other than the credit union. For the

purposes of this paragraph, compensation includes non-monetary items and anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest, but compensation does not include nonmonetary items of nominal value.

(h) Aggregate Member Business Loan Limit.

(1) Limits. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under 12 U.S.C. Section 1790d(c)(1)(A). For purposes of this calculation, member business loan means any commercial loan, except that the following commercial loans are not member business loans and are not counted toward the aggregate limit on member business loans:

(A) any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase the loan in full; and

(B) any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the credit union acquired the non-member loans or participation interest in compliance with applicable laws and the credit union is not, in conjunction with one or more other credit unions, trading member business loans to circumvent the aggregate limit under this subsection.

(2) Exceptions. Any loan secured by a lien on a 1- to 4-family residential property that is not a member's primary residence, any loan secured by a lien on a vehicle manufactured for household use that will be used for commercial, corporate, or other business investment property or venture, and any other loan for an agricultural purpose are not commercial loans (if the outstanding aggregate net member business loan balance is \$50,000 or greater), and must be counted toward the aggregate limit on a credit union's member business loans under this subsection.

(3) Exemption. A credit union that has a federal low-income designation, or participates in the federal Community Development Financial Institution program, or was chartered for the purpose of making member business loans, or which as of the date of the Credit Union Membership Access Act of 1998 had a history of primarily making commercial loans, is exempt from compliance with the aggregate member business loan limits in paragraph (1) of this subsection.

(4) Method of Calculation for Net Member Business Loan Balance. For the purposes of NCUA form 5300 reporting (call report), a credit union's net member business loan balance is determined by calculating the sum of the outstanding loan balance plus any unfunded commitments and reducing that sum by any portion of the loan that is: secured by shares in the credit union, by shares or deposits in other financial institutions, or by a lien on a borrower's primary residence; insured or guaranteed by any agency of the federal government, a state, or any political subdivision of a state; or subject to an advance commitment to purchase by any agency of the federal government, a state, or any political subdivision of a state; or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(i) Aggregation and Attribution for Commercial Loans.

(1) General Rule. A commercial loan or extension of credit to one borrower is attributed to another person, and each person will be considered a borrower, when:

(A) the proceeds of the commercial loan or extension of credit are to be used

for the direct benefit of the other person, to the extent of the proceeds so used, as provided by paragraph (2) of this subsection;

(B) a common enterprise is deemed to exist between the persons as persons as provided by paragraph (3) of this subsection; or

(C) the expected source of repayment for each commercial loan or extension of credit is the same for each person as provided by paragraph (4) of this subsection.

(2) Direct Benefit. The proceeds of a commercial loan or extension of credit to a borrower is considered used for the direct benefit of another person and attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred in any manner to or for the benefit of the other person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services from such other person.

(3) Common Enterprise.

(A) Description. A common enterprise is considered to exist and commercial loans to separate borrowers will be aggregated when:

(i) the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this subparagraph because of wages and salaries paid to an employee, unless the standards of subdivision (ii) of this subparagraph are met:

(ii) the loans or extension of credit are made:

a. to borrowers who are related directly or indirectly through control as defined by subsection (a) of this section; and

b. substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and other similar receipts or payments;

(iii) separate persons borrow from a credit union to acquire a business of enterprise of which those borrowers will own more than fifty (50) percent of the voting securities of voting interest, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) the Department determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(B) Commercial Loans to Certain Entities. A commercial loan or extension of credit:

(i) to a partnership or joint venture is considered to be a commercial loan or extension of credit to each member of the partnership or joint venture. Excepted from this subdivision is a partner or member who: is not held generally liable, by the terms of the partnership or membership agreement or by applicable law, for the debts or actions of the partnership, joint venture, or association, provided those terms are valid against third parties under applicable law; and has not otherwise agreed to guarantee or be personally liable on the loan or extension of credit.

(ii) to a member of a partnership, joint venture, or association is generally not attributed to the partnership, joint venture, or associations, or to other members of the partnership, joint venture, or association, except as otherwise provided by paragraphs (2) –

(4) of this subsection, provided that a commercial loan or extension of credit made to a member of a partnership, joint venture or association for the purpose of purchasing an interest in the partnership, joint venture or association, is attributed to the partnership, joint venture or association.

(C) Guarantors and Accommodation Parties. The derivative obligation of a drawer, endorser, or guarantor of a commercial loan or extension of credit, including a contingent obligation to purchase collateral that secures a commercial loan, is aggregated with other direct commercial loans or extensions of credit to such a drawer, endorser, or guarantor.

(i) Commercial Loans to One Borrower Limit. The total aggregate dollar amount of commercial loans by a credit union to any borrower at one time may not exceed the greater of fifteen (15) percent of the credit union's net worth or \$100,000, plus an additional ten (10) percent of the credit union's net worth if the amount that exceeds the credit union's fifteen (15) percent general limit is fully secured at all times with a perfected security interest in readily marketable collateral. Any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the commercial loan in full, is excluded from this limit.

(k) Finance Code Limitation. In addition to the other limitations of this section, a credit union may not make a loan to a member or a business interest of the member if the loan would cause the aggregate amount of loans to the member and the member's business interests to exceed an amount equal to 10 percent of the credit union's total assets as provided by TEX. FIN. CODE §121.003.

(l) Commercial Loans Regarding Federal or State Guaranteed Loan Programs. A credit union may follow the loan requirements and limits of a guaranteed loan program for loans that are part of a loan program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the loan in full if that program has requirements that are less restrictive than those required by this section.

(m) Transitional Provisions.

(1) Waivers. Upon the effective date of this section, any waiver approved by the Department concerning a credit union's commercial lending activity is rendered moot, except for waivers granted for the commercial loan to one borrower limit. Borrowing relationships granted by waivers will be grandfathered however, the debt associated with those relationships may not be increased.

(2) Administrative Constraints. Limitations or other conditions imposed on a credit union in any written directive from the Department are unaffected by the adoption of this section. As of the effective date of this section, all such limitations or other conditions remain in place until such time as they are modified by the Department.

(m) Effective Date. This section takes effect on January 1, 2017. (a) A member business loan is defined as any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose, except that the following shall not be considered a member business loan for the purposes of this rule:

- (1) A loan secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;
- (2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;
- (3) A loan to another credit union or a credit union service organization;

~~(4) Loan(s) otherwise meeting the definition of a member business loan made to a member or associated member that, in the aggregate, is \$50,000 or less; or~~

~~(5) A loan where a federal or state agency or one of its political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.~~

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

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

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

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

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

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

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

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

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

~~(3) The commissioner shall deny a request to exceed the aggregate limit on member business loans, or may revoke a previously approved increased aggregate limit, if the commissioner determines that:~~

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

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

~~(C) the performance of the activity by the credit union will or has adversely affected the safety and soundness of the credit union.~~

~~(e) The aggregate amount of net member business loan balances any one member or group of associated members shall not be more than 15% of the credit union's net worth (less the Allowance for Loan Losses account) or \$100,000.00, whichever is higher. If any portion of a member business loan is secured by shares in the credit union or deposits in another financial institution, or is fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 15% limit.~~

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

- ~~(1) a credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and~~
- ~~(2) a loan made by a credit union under the following conditions:~~
- ~~(A) the amount of the loan does not exceed one hundred thousand dollars;~~
- ~~(B) the aggregate of all unsecured member business loans does not exceed ten percent of the credit union's net worth; and~~
- ~~(C) the credit union has a net worth of at least seven percent.~~
- ~~(g) The maximum loan-to-value (LTV) ratio for a member business loan may not exceed eighty percent, except when:~~
- ~~(1) the loan is secured by collateral on which the credit union will have a first mortgage lien, and the loan is:~~
- ~~(A) covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or~~
- ~~(B) Insured or guaranteed, or subject to advance commitment to purchase, by any federal or state agency or any political subdivision of this State.~~
- ~~In no case, however, may the LTV ratio for a member business loan secured by a first mortgage lien exceed ninety five percent; or~~
- ~~(2) the loan is to purchase a car, van, pick-up truck, or sport utility vehicle and is not part of a fleet of vehicles. The LTV ratio and the term for this vehicle loan must be consistent with the depreciation schedule of any vehicle used for a particular type of business.~~
- ~~(h) A credit union that engages in this type of lending shall adopt specific member business loan policies and review them at least annually. The policies, at a minimum, shall address all of the following areas:~~
- ~~(1) Types of business loans to be made and collateral requirements for each type of loan.~~
- ~~(2) The maximum amount of net member business loan balances relative to the credit union's net worth.~~
- ~~(3) The maximum amount of any given category or type of member business loan relative to the credit union's net worth.~~
- ~~(4) The maximum amount that will be loaned to any one member or group of associated members, subject to subsection (c) of this section.~~
- ~~(5) The qualifications and experience requirements for personnel involved in making and servicing business loans.~~
- ~~(6) A requirement for analysis of the member's initial and ongoing financial capacity to repay the debt.~~
- ~~(7) Documentation sufficient to support each request for an extension of credit or an increase in an existing loan or line of credit, except where the board of directors finds that the required documentation is not reasonably available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the documentation must include the following:~~
- ~~(A) A balance sheet;~~
- ~~(B) An income statement;~~
- ~~(C) A cash flow analysis;~~
- ~~(D) Income tax data;~~
- ~~(E) Analysis of leveraging; and~~
- ~~(F) Receipt and the periodic updating of financial statements, income tax data, and other documentation.~~

- ~~(8) Collateral requirements which include all of the following:~~
- ~~(A) Loan to value (LTV) ratios;~~
 - ~~(B) Appraisal, title search, and insurance requirements; and~~
 - ~~(C) Steps to be taken to secure various types of collateral.~~
- ~~(9) Identification, by position, of the officials and senior management employees who are prohibited from receiving member business loans which, at a minimum, shall include the credit union's chief executive officer, any assistant chief executive officers, the chief financial officer, and any associated member or immediate family member of such persons.~~
- ~~(10) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.~~
- ~~(i) Construction and development of commercial or residential property are subject to the following additional requirements:~~
- ~~(1) The aggregate of all construction and development loans must not exceed 15% of the credit union's net worth. To determine the aggregate, a credit union may exclude any portion of a loan:~~
 - ~~(A) Secured by shares in the credit union;~~
 - ~~(B) Secured by deposits in another financial institution;~~
 - ~~(C) Fully or partially insured or guaranteed by any agency of the federal government, state, or its political subdivisions; or~~
 - ~~(D) Subject to an advance commitment to purchase by an agency of the federal government, state, or its political subdivisions;~~
 - ~~(2) The member borrower on such loans must have a minimum of:~~
 - ~~(A) 30% equity interest in the project being financed if the loan is for land development; or~~
 - ~~(B) 25% equity interest in the project being financed if the loan is for construction or for combination of development and construction; and~~
 - ~~(3) The funds may be released only after on-site, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.~~
- ~~(j) For the purposes of this section, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.~~
- ~~(1) Associated member — means any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.~~
 - ~~(2) Net Member Business Loan Balance — means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.~~
 - ~~(3) Net Worth — means retained earnings as defined under Section 702.2 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 702).~~

HOME EQUITY RULE REVIEW

D. (6) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC, Part 8, Chapter 151 (relating to Home Equity Lending Procedures); Chapter 152 (related to Repair, Renovation, and New Construction on Homestead Property); and Chapter 153 (relating to Home Equity Lending).

BACKGROUND: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 8, Chapters 151, 152, and 153. The notice of the review was published in the *Texas Register* as required on February 26, 2016 (41 TexReg 1503). The Department received one comment in response to that notice. The Department believes that the reasons for initially adopting these rules continue to exist. As a result of internal review by the Department, staff believes that certain revisions are appropriate and necessary. Amendments to Chapter 153 are being separately presented for proposal and include certain recommendations made by the commenter.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

Title 7. Banking and Securities

Part 8. Joint Financial Regulatory Agencies

Chapter 151. Home Equity Lending Procedures

Chapter 152. Repair, Renovation, and New Construction on Homestead Property

Chapter 153. Home Equity Lending

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") have completed the review of the following chapters of Texas Administrative Code, Title 7, Part 8:

Chapter 151 (relating to Home Equity Lending Procedures), consisting of §§151.1-151.8;

Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property), consisting of §§152.1, 152.3, 152.5, 152.7, 152.9, 152.11, 152.13, and 152.15; and

Chapter 153 (relating to Home Equity Lending), consisting of §§153.1-153.5, 153.7-153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84-153.88, and 153.91-153.96.

Notice of the review of 7 TAC, Part 8, Chapters 151, 152, and 153 was published in the *Texas Register* as required on February 26, 2016 (41 TexReg 1503). The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") received one comment on the notice of intention to review. The comment was submitted by Black, Mann & Graham, L.L.P. The commenter makes several recommendations for amendments to the interpretations in Chapter 153.

In §153.8, the commenter makes two recommendations. First, the commenter recommends adding a new paragraph describing a situation where the borrower "is considered the owner" for purposes of the constitutional home equity provisions. The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance to lenders, and the commenter's recommended text incorrectly assumes that the borrower is the only owner of the homestead. Second, in §153.8(5), the commenter recommends correcting the current reference to "50(a)(H)" to correctly refer to Section 50(a)(6)(H). In response to this recommendation, the commissions are proposing an amendment to §153.8(5), published elsewhere in this issue of the *Texas Register*, that corrects this citation.

In §153.10, the commenter recommends "that §153.10(2) be revised to clarify that if the property ceases to be the homestead of the owner, and the owner's spouse, who makes the equity loan, the equity loan may be treated by the lender or any other lender as a valid non-home equity loan secured by the property." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance to lenders, and the commenter's recommended amendment uses unclear terminology.

In §153.12, the commenter suggested deleting a sentence about providing a required disclosure to married owners, and suggested adding the following sentence: "For married owners, only the spouse who will sign the equity loan debt instrument (e.g., a promissory note) is 'the owner' for purposes of Section 50(a)(6)(M)(i)." The commissions disagree with this recommendation, because the commenter's recommended amendment incorrectly assumes that the borrower is the only owner of the homestead.

In §153.13, the commenter makes three recommendations. First, the commenter recommends adding a statement that the preclosing disclosure requirement is limited to costs charged at closing. The commissions disagree with this recommendation. This revision is unnecessary, because the provisions identify the disclosures that lenders can provide in order to comply with the preclosing disclosure requirement. Second, in §153.13(3), the commenter recommends replacing the reference to the Department of Housing and Urban Development HUD-1 form with a reference to the recently adopted Consumer Financial Protection Bureau closing disclosure. The closing disclosure integrates and replaces the previous HUD-1 form. Lenders have been required to provide the closing disclosure since October 3, 2015, under Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38. In response to this recommendation, the commissions are proposing amendments to §153.13(3), published elsewhere in this issue of the *Texas Register*, that would replace the reference to the HUD-1 form with references to disclosures currently required under Regulation Z. Third, in §153.13(6), the commenter suggests adding a statement that the loan may be closed "at any time" on a day after the owner receives the preclosing disclosure, and adding the following sentence: "Normal business hours are those of the closing office conducting the closing in accordance with §153.15(1)." The commissions disagree with this recommendation. The commissions believe that these revisions are unnecessary, because the current provision provides sufficient guidance to lenders.

In §153.15, the commenter recommends adding the following definitions of "attorney at law" and "title company": "An attorney at law is any attorney at law licensed to practice law in any state, territory or other jurisdiction of the United States. A title company is any title insurer or an agent of a title insurer licensed and regulated by the state, territory or jurisdiction of the United States in which it conducts business as a title insurer or agent of a title insurer." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, and the commenter's proposed amendment would create the need for additional provisions specifying, for example, how to treat an attorney licensed in another state but engaged in unauthorized practice of law in Texas.

In §153.17, the commenter makes three recommendations. First, the commenter recommends an amendment specifying that the lenders authorized to make a home equity loan include "a bank, savings and loan association, savings bank, or credit union chartered or organized under another state's laws that is also authorized to conduct business in this state by the appropriate banking agency of this state." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, and the commenter's proposed amendment would create the need for additional provisions to ensure that the interpretation is limited to depository institutions doing business under the laws of Texas, as provided by Section 50(a)(6)(P)(i). Second, the commenter recommends an amendment

specifying that a lender licensed under Texas Finance Code, Chapter 156 or 157 is a mortgage broker for purposes of the constitution. In response to this recommendation, the commissions are proposing a new provision, published elsewhere in this issue of the *Texas Register*, that would specify that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution. Third, the commenter recommends correcting a reference to "another section of (a)(6)(P)" to refer to Section 50(a)(6)(P). In response to this recommendation, the commissions are proposing an amendment to §153.17(2), published elsewhere in this issue of the *Texas Register*, that would replace this phrase with "another provision of Section 50(a)(6)(P)."

In §153.18, the commenter recommends an amendment to re-insert language that the commissions deleted in 2006, regarding the limitation on application of proceeds. The commissions disagree with this recommendation. For the reasons discussed in the commissions' preamble to the 2006 amendments (31 TexReg 5083-84), the commissions believe that it is appropriate to maintain the current text of §153.18.

In §153.20, the commenter recommends an amendment "to clarify what are 'substantive terms of agreement' in regard to blanks in an instrument." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance regarding blanks in home equity instruments.

In §153.51, the commenter recommends adding the following sentence: "For married owners, only the spouse who will sign the debt instrument (e.g., a promissory note) of the equity loan agreement is 'the owner' for purposes of Section 50(g)." The commissions disagree with this recommendation. The commissions believe that this revision is unnecessary, because the current provision provides sufficient guidance to lenders, and the commenter's recommended text incorrectly assumes that the borrower is the only owner of the homestead.

As a result of the comment and internal review by the agencies, the commissions have determined that certain revisions are appropriate and necessary. The commissions are concurrently proposing amendments to Chapter 153, as published elsewhere in this issue of the *Texas Register*. Subject to the concurrently proposed amendments to Chapter 153, the commissions find that the reasons for initially adopting these rules continue to exist, and readopt Chapters 151, 152, and 153 in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 8, Chapters 151, 152, and 153.



March 21, 2016

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Re: Comments in response to Proposed Rule Review Notice published in the February 26, 2016, *Texas Register* (41 TexReg 1503) regarding readoption, revision, or repeal of Home Equity Interpretations (7 TAC Chapter 153) by the Finance Commission of Texas and the Texas Credit Union Commission.

Dear Ms. Hobbs:

Black, Mann & Graham, L.L.P. represents over 250 residential mortgage lending clients in Texas, providing legal expertise in loan document production, state and federal regulatory compliance, and legal and closing issues relating to the perfection of valid mortgage liens on Texas homesteads and other Texas residential properties. Through our Dallas, Flower Mound and Houston offices and onsite personnel, we engage our clients daily in closing conventional, FHA, VA, home improvement and home equity loans.

The Notice requests written comments regarding the readoption, revision, or repeal of the home equity interpretations by the Commissions. In response, this letter comments on and proposes revisions to the following home equity interpretations:

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

1. Section 50(a)(6)(H) prohibits an equity loan from being “secured by any additional real or personal property other than the homestead.” This Interpretation lists certain items that it interprets are not additional real or personal property in violation of this Section. In recognition that (i) this list is not exhaustive, (ii) the definition of owner in §153.1(13) includes persons related by affinity or consanguinity who have separate homesteads in the same real property (e.g., a child, mother, father or sibling), and (iii) this situation either prevents an owner-borrower from obtaining a home equity loan because the other owners will not be signing the equity loan note although they will be signing the equity loan deed of trust or, to satisfy Section 50(a)(6)(H), the non-borrowing owner(s) must abandon the homestead and convey their property interests to the owner-borrower, we recommend that §153.8 be revised to clarify that the real property subject to these separate homesteads may secure a home equity loan to the owner-borrower without the separate homesteads of the persons related to the owner-borrower by affinity or consanguinity being considered “additional real or personal property other than the homestead” prohibited by section 50(a)(6)(H). To accomplish this, we propose adding new 153(6) to read:

“(6) When persons related by affinity or consanguinity having separate homesteads in the same real property sign the equity loan security instrument (e.g., deed of trust), but less than all of those persons sign the equity loan debt instrument (e.g., a promissory note), an equity loan made to one of those persons and secured by that real property is not secured by additional real property in violation of Section 50(a)(6)(H) and, except for Sections 50(a)(6)(A) and (Q)(xi), the person who is the equity loan borrower is considered the owner and that real property is considered the homestead of that owner for purposes of compliance with Section 50(a)(6) and Sections 50(e)-(i) and (t).”

2. The misprint “50(a)(H)” in §153.8(5) should be corrected to read “50(a)(6)(H).”

§153.10. Number of Loans: Section 50(a)(6)(K).

We recommend that §153.10(2) be revised to clarify that if the property ceases to be the homestead of the owner, and the owner’s spouse, who made the equity loan, the equity loan may be treated by the lender or any other lender as a valid non-home equity loan secured by the property. To accomplish this purpose we propose the following revisions:

“(2) Loss of Homestead Designation. If under Texas law the property ceases to be the homestead of the owner, and the owner’s spouse, who made the equity loan, then ~~[the lender, for purposes of Section 50(a)(6)(K), may treat]~~ what was previously ~~an [home]~~ equity ~~[mortgage] loan~~ may be treated as a [non-homestead mortgage] valid non-equity loan secured by the property.”

We recommend these revisions to clarify the following:

1. The equity loan lender and subsequent lenders may refinance the loan without having to comply with the requirements and conditions of Section 50(a)(6).
2. The loan may be assumed without continuing its equity loan character.
3. A new equity loan may be made and secured by the property before the first anniversary of the closing date of the loan.

§153.12. Closing Date: Section 50(a)(6)(M)(i).

Due to the differing language in the Interpretations regarding owner for purposes of Section 50(a)(6) – see definition of owner in §153.1(13) and the Interpretations that refer to the owner or to the owner and spouse - we recommend that this Interpretation be revised to clarify that Section 50(a)(6)(M)(i) does not require the non-borrowing spouse to submit, sign or acknowledge the loan application and does not require a copy of the consumer disclosure to be provided to, signed or acknowledged by the non-borrowing spouse.

To accomplish these purposes we propose the following revisions to the introductory paragraph:

“An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. ~~[One copy of the required consumer disclosure may be provided to married owners.]~~ For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan

to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. For married owners, only the spouse who will sign the equity loan debt instrument (e.g., a promissory note) is ‘the owner’ for purposes of Section 50(a)(6)(M)(i).”

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

1. We request that the Commissions reconsider their prior reservation on providing guidance on the meaning of the phrase “actual fees, points, interest, costs, and charges that will be charged at closing” (see preamble in the January 2, 2004 *Texas Register*, 29 TexReg 89). The Commissions’ statement in that preamble that “[t]he Commissions believe that the Interpretation gives clarification and context to the term ‘fees and charges’ as used in Section 153.13[,]” when read in context with the other statements in that section of the preamble, implies that the term “fees and charges” is limited to those charged to the owner at closing. Furthermore, since the adoption of §153.13 it has been an accepted practice for lenders not to restart the one business day preclosing timing requirement for an amount disclosed on a revised final itemized disclosure that is paid by a person other than the owner or for which a credit is given to the owner at closing. Because of this accepted practice and the implication by the above quoted statement by the Commissions, we recommend that this Interpretation be revised to clarify that the phrase “actual fees, points, interest, costs, and charges that will be charged at closing[,]” and similar phrases in this Interpretation, include only amounts charged to the owner at closing.

To accomplish this purpose we propose the following sentence be added to the introductory paragraph:

“For purposes of this section, the actual fees, points, interest, costs, and charges that will be charged at closing are limited to those charged to the owner at closing and do not include those paid by a person other than the owner or for which a credit is given to the owner at closing.”

2. Section 50(a)(6)(M)(ii), in pertinent part, requires that an equity loan cannot close before one business day after the homestead owner receives “a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.” The Interpretation in §153.13(3) provides that this disclosure requirement is satisfied by “delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.” Effective for loans for which applications are received on or after October 3, 2015, new §§1026.19(f) and 1026.38 of Regulation Z (12 CFR Part 1026) mandate a new disclosure form – the Closing Disclosure Model Form H-25(A) - that replaces the HUD-1 and HUD-1A disclosure forms. For this reason, we recommend that §153.13(3) be revised to reflect this new Federal regulatory disclosure requirement and propose the following revision to §153.13(3):

“(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed ~~Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A~~ Bureau of Consumer Financial Protection Closing Disclosure Form.”

3. We request that the Commissions reconsider their prior reservation to provide guidance in §153.13(6) on the application of “normal business hours” (see preamble in the June 23, 2006 *Texas Register*, 31 TexReg 5083). While we agree with the Commissions’ preamble statement that “[w]hat constitutes normal business hours is a fact-specific question ... [that] is most appropriately raised in a court of law,” stating the day and to whom “normal business hours” applies is not a fact-specific question outside the Commissions’ interpretive authority. Section 50(a)(6)(M)(ii) does not restrict an equity loan closing to normal business hours; that restriction is added by the Commissions Interpretation in §153.13(6). It stands to reason, then, that if the Commissions have the interpretive authority to restrict the closing to normal business hours, they have the interpretive authority to state the day and to whom it applies. For these reasons, we recommend that §153.13(6) be revised and propose the following revisions:

“(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or at any time on any calendar day thereafter. Normal business hours are those of the closing office conducting the closing in accordance with §153.15(1).”

§153.15. Location of Closing: Section 50(a)(6)(N).

We recommend that this Interpretation be revised to clarify that attorneys who are licensed in other states and title companies located in other states are authorized by Section 50(a)(6)(N) to close equity loans. In initially adopting this Interpretation (see January 2, 2004 *Texas Register*, 29 TexReg 84), the Commissions stated in the preamble (29 TexReg 90) that they “do not believe that attorneys must be licensed in Texas to close equity loans ... [and] that closings may occur within or outside the state.” Because Section 50(a)(6)(N) and this Interpretation are silent on these issues, which has and continues to cause confusion in the residential mortgage lending and title industries, we recommend that the Commissions revise this Interpretation in line with their preamble statements. To accomplish this purpose, we propose the following sentences be added to the end of the introductory paragraph:

“An attorney at law is any attorney at law licensed to practice law in any state, territory or other jurisdiction of the United States. A title company is any title insurer or an agent of a title insurer licensed and regulated by the state, territory or jurisdiction of the United States in which it conducts business as a title insurer or agent of a title insurer.”

The second sentence in the proposed revision concerning a title company is based on the appellate court decision in *Rooms With A View, Inc. v. Private National Mortgage Association*, 7 S.W.3d 840 (Tex.App.—Austin 1999, pet. denied 2000), which defined “title company” as used in Section 50(a)(5) and (6) to mean “a title insurer or an agent of a title insurer” and held that “[n]othing suggests the legislature intended ‘title company’ to refer to an entity performing only title abstractions.”

§153.17. Authorized Lenders: Section 50(a)(6)(P).

1. Section 50(a)(6)(P) states “a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States” is authorized to make an equity

loan. This Interpretation is silent as to the applicability of the phrase “under the laws of this state” to a bank, savings and loan association, savings bank, or credit union chartered or organized under another state’s laws that is also authorized to conduct business in this state by the appropriate banking agency of this state. We recommend that this Interpretation be revised to clarify that the phrase “under the laws of this state” applies to such out of state depository entities.

2. Section 50(a)(6)(P)(vi) states “a person regulated by this state as a mortgage broker” is authorized to make an equity loan. Before September 1, 2011, there was no need to interpret this provision because the statutory and administrative provisions regulating residential mortgage lenders used the term mortgage broker.

Effective September 1, 2011, statutory changes to Chapter 156 of the Texas Finance Code eliminated the term mortgage broker, replacing it with the term mortgage company, and eliminated the term loan officer, replacing it with the term residential mortgage loan originator. At that time, mortgage brokers and their loan officers were licensed under Chapter 156. In anticipation of this statutory change to Chapter 156, the Texas Department of Savings and Mortgage Lending, on August 25, 2011, issued its *Home Equity Terminology Advisory Bulletin* that, in pertinent part, states “a person regulated by this state who is licensed under Texas Finance Code Chapter 156 may originate a home equity loan, as provided by Texas Constitution Article XVI §50(a)(6)(P)(vi).” Effective September 1, 2013, statutory changes to Chapters 156 and 157 of the Texas Finance Code moved the licensing of residential mortgage loan originators to Chapter 157. The Texas Administrative Code rules regulating residential mortgage lenders (7 TAC Chapters 80 and 81) were also amended to reflect these statutory changes to Chapters 156 and 157.

Due to the above statutory and administrative rule changes, we recommend that §153.17(4) be revised to clarify who is a mortgage broker for the purposes of Section 50(a)(6)(P)(vi). For this purpose, we propose the following addition and revision:

“(4) A person licensed under Texas Finance Code Chapter 156 or Chapter 157 is a person regulated by this state as a mortgage broker under Section 50(a)(6)(P)(vi). A [lender] person who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).”

3. The misprint “(a)(6)(P)” in §153.17(2) should be corrected to read “50(a)(6)(P).”

§153.18. Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).

Effective June 29, 2006, this Interpretation was revised. One of the revisions deleted former §153.18(3) - the debt consolidation provision - that read: “When an owner applies for a debt consolidation loan, it is the owner, not the lender, that is requiring that proceeds be applied to another debt. If the proceeds of a home equity loan are used in conformity with owner’s credit application the limitations of this section do not apply.” The 2006 revisions also revised the second sentence of former §153.18(1) (now §153.18(2)) to read: “An owner is not precluded from voluntarily using the proceeds of an equity loan to pay on a debt owed to the lender making the

equity loan.” With the deletion of former §153.18(3), this Interpretation no longer provides any guidance on the “voluntariness” of a payment expressed in §153.18(2). We request that the Commissions reconsider their prior reservations on providing guidance on this voluntary payment issue (see preamble in the June 23, 2006 *Texas Register*, 31 TexReg 5083-5084). We recommend that this Interpretation be revised to provide general guidance on this issue or, at the very least, some voluntary payment examples.

§153.20. No Blanks in Any Instrument: Section 50(a)(6)(Q)(iii).

This Interpretation was last revised on June 29, 2006. On November 6, 2007, Section 50(a)(6)(Q)(iii) was amended to add the words “relating to substantive terms of agreement” so that it now reads “the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in[.]” (**Emphasis added.**) We recommend that this Interpretation be revised to clarify what are “substantive terms of agreement” in regard to blanks in an instrument.

§153.51. Consumer Disclosure: Section 50(g).

Due to the differing language in the Interpretations regarding owner for purposes of Section 50(a)(6) – see definition of owner in §153.1(13) and the Interpretations that refer to the owner or to the owner and spouse - we recommend that this Interpretation be revised to clarify that Section 50(g) does not require a copy of the consumer disclosure to be provided to, signed or acknowledged by the non-borrowing spouse. To accomplish this purpose we propose that the following sentence be added immediately after the introductory sentence:

“For married owners, only the spouse who will sign the debt instrument (e.g., a promissory note) of the equity loan agreement is ‘the owner’ for purposes of Section 50(g).”

We appreciate the opportunity to provide the Finance Commission of Texas and the Texas Credit Union Commission with the above comments and proposed revisions to their home equity interpretations.

Sincerely,
Black, Mann & Graham, L.L.P.

/s/ David F. Dulock

David F. Dulock
For the Firm

HOME EQUITY LENDING RULE REVIEW

D. (7) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 8, Chapter 153 Concerning Home Equity Lending from Rule Review.

BACKGROUND: The main purpose of the proposed amendments is to implement changes resulting from the review of Chapter 153 under Texas Government Code, §2001.039. The proposed amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

*Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to the following home equity lending interpretations: §153.5, concerning Three percent fee limitation, §153.8, concerning Security of the Equity Loan, §153.13, concerning Preclosing Disclosures, and §153.17, concerning Authorized Lenders.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

In general, the purpose of the amendments to Chapter 153 is to implement changes resulting from the commissions' review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 153 was published in the *Texas Register* on February 26, 2016 (41 TexReg 1503). The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") received one comment on the notice of intention to review. The comment was submitted by Black, Mann & Graham L.L.P.

The agencies prepared an initial draft of amendments with technical corrections and updates to Chapter 153. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies

received written precomments from several stakeholders. The agencies have incorporated suggestions offered by stakeholders into the proposed amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting proposal.

The individual purposes of the proposed amendments to each rule are provided in the following paragraphs.

The purpose of the amendments to §153.5 is to use terminology that is consistent with other interpretations. In paragraphs (3)(B) and (7), the amendments add "equity" before "loan" to ensure that the provisions use the term "equity loan," which is defined in §153.1(7).

The purpose of the amendment to §153.8(5) is to make a technical correction in a citation to Section 50(a)(6)(H). In the comment on the notice of intention to review, the commenter notes that this section currently contains an incorrect reference to "Section 50(a)(H)." In response to this comment, the amendment corrects the provision to cite Section 50(a)(6)(H).

The purpose of the proposed amendments to §153.13 is to specify how lenders can comply with the preclosing disclosure requirement in Section 50(a)(6)(M)(ii), and to include updated citations to federal rules. Under Section 50(a)(6)(M)(ii), a home equity loan may not be closed before "one business day after the date that the owner of the homestead receives . . . a final itemized disclosure of the actual fees, points, interest, costs, and

charges that will be charged at closing." Currently, §153.13(3) explains that lenders may comply with this requirement by providing a properly completed HUD-1 form from the U.S. Department of Housing and Urban Development. The Consumer Financial Protection Bureau (CFPB) recently adopted a closing disclosure that integrates and replaces the HUD-1 form. The CFPB's rules containing the requirements for the integrated closing disclosure are located at Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38. The requirement to provide the closing disclosure went into effect on October 3, 2015. The requirement generally applies to closed-end residential mortgage loans for which the lender or servicer received a loan application on or after that date. For loans where the application was received before October 3, the HUD-1 form (rather than the CFPB closing disclosure) was the appropriate form for lenders to use. The closing disclosure requirement does not apply to home equity lines of credit, which require separate account-opening disclosures under a different section of Regulation Z, 12 C.F.R. §1026.6(a).

In the comment on the notice of intention to review, the commenter recommends replacing the reference to the HUD-1 form in §153.13(3) with a reference to the CFPB's closing disclosure. Based on this recommendation and the federal rules discussed above, the proposed amendments to §153.13(3) delete the reference to the HUD-1 form, and add new references to the disclosures currently required under Regulation Z: the closing disclosure (for closed-end equity loans) and the account-opening disclosures (for home equity lines of credit). When these disclosures are properly completed, they provide borrowers with a final itemized disclosure of the actual

fees, points, interest, costs, and charges that will be charged at closing, in accordance with Section 50(a)(6)(M)(ii).

The purpose of the amendment to §153.14(2)(A) is to update a citation to federal law. Currently, this provision cites the Soldiers' and Sailors' Civil Relief Act. In 2003, the Servicemembers Civil Relief Act replaced the former Soldiers' and Sailors' Civil Relief Act. The amendment to §153.14(2)(A) replaces a citation to the previous law with a citation to the current law.

The purpose of the amendments to §153.17 is to specify who is authorized to make a home equity loan, in light of recent changes in federal policy and amendments to the licensing provisions of Texas Finance Code, Chapters 156 and 342. Section 50(a)(6)(P) lists the types of lenders that are authorized to make home equity loans, including "a person approved as a mortgagee by the United States government to make federally insured loans," "a person licensed to make regulated loans, as provided by statute of this state," and "a person regulated by this state as a mortgage broker."

In §153.17(2), a proposed amendment removes a reference to "Approved correspondents" and replaces it with "Loan correspondents." In 2010, the Department of Housing and Urban Development ended its program of approving loan correspondents, as described in mortgagee letter 2010-20. As amended by the proposed amendments, §153.17(2) explains that loan correspondents to an approved mortgagee are not authorized lenders unless they qualify under another provision of Section 50(a)(6)(P). In addition, in the comment on the notice of intention to review, the

commenter recommends correcting a reference in §153.17(2) to "another section of (a)(6)(P)." In response to this recommendation, a proposed amendment replaces this phrase with "another provision of Section 50(a)(6)(P)."

Proposed new §153.17(3) explains that a person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage broker for purposes of Section 50(a)(6)(P)(vi). Until 2011, Chapter 156 of the Texas Finance Code described the licensing requirements for mortgage brokers. In 2011, the chapter was amended to replace the term "mortgage broker" with the terms "residential mortgage loan company" and "residential mortgage loan originator." In 2011, the Texas Department of Savings and Mortgage Lending published a "Home Equity Terminology Advisory Bulletin," explaining that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution. In the comment on the notice of intention to review, the commenter recommends an amendment to §153.17 describing this interpretation. In response to this comment, proposed new §153.17(3) explains that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution.

Proposed new §153.17(4) replaces current paragraphs (3) and (4), and explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution. Current §153.17(3) explains that a nondepository lender must hold a license under Chapter 342 to make, transact, or negotiate a secondary mortgage loan. Current §153.17(4) explains that if a person does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to

be authorized to make home equity loans. In 2007, Texas Finance Code, §342.051 was amended to include an exemption for a person licensed under Chapter 156. In a precomment, one stakeholder recommends deleting current paragraph (3), because the paragraph does not acknowledge the exemption for Chapter 156 licensees, and because current paragraph (1) already explains that lenders must comply with statutory licensing requirements. In response to this precomment, the proposal replaces paragraphs (3) and (4) with a new paragraph (4). The new paragraph explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution, and that if a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to be authorized to make home equity loans.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have 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 the amendments will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the

amendments as proposed. Regulation Z currently requires lenders to provide the disclosures described in the proposed amendments to §153.13. Any costs of complying with the proposed amendments are imposed by the constitution and federal law, and are not imposed by the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The amendments are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5) - (7), (e) - (p), (t), and (u) of the Texas Constitution. The constitutional provisions affected by the proposed amendments are contained in Article XVI, Section 50 of the Texas Constitution.

§153.5. *Three percent fee limitation: Section 50(a)(6)(E).*

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the three percent limitation.

(A) (No change.)

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) - (6) (No change.)

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities

relating to originating an equity [a] loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(8) - (16) (No change.)

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) - (4) (No change.)

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H) [~~50(a)(H)~~].

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may

provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) - (2) (No change.)

(3) The lender must deliver to the owner a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(A) For a closed-end equity loan, the lender may satisfy this requirement by delivering a properly completed closing disclosure under Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38.

(B) For a home equity line of credit, the lender may satisfy this requirement by delivering properly completed account-opening disclosures under Regulation Z, 12 C.F.R. §1026.6(a).

~~[(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.]~~

(4) - (7) (No change.)

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) (No change.)

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b [~~Soldiers' and Sailors' Civil Relief Act~~].

(B) - (D) (No change.)

§153.17. *Authorized Lenders: Section 50(a)(6)(P).*

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to

the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage broker.

(1) An authorized lender under Texas Finance Code, Chapter 341 [~~Texas Finance Code~~], must meet both constitutional and statutory qualifications to make an equity loan.

(2) A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan [Approved] correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P) [~~section of (a)(6)(P)~~].

(3) A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage broker for purposes of Section 50(a)(6)(P)(vi).

(4) A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

~~[(3) A non-depository lender or broker that makes, negotiates, arranges, or transacts a secondary mortgage loan that is governed by Chapter 342, Texas Finance~~

~~Code, must comply with the licensing provisions of Chapter 342, Texas Finance Code.]~~

~~[(4) A lender who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).]~~

Certification

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on July 8, 2016.

Harold Feeney
Credit Union Commissioner
Joint Financial Regulatory Agencies

FY 2017-2020 RULE REVIEW PLAN

D. (8) Discussion of and Possible Vote to Approve the Department's 2017-2020 Rule Review Plan as Required by Section 2001.039, Government Code.

BACKGROUND: Section 2001.39, Government Code, provides that a state agency shall review a rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. Further, each agency is required to develop a plan under which the agency will review all of its existing rules. The plan must state for each of those rules the date by which the agency will begin the review required by Section 2001.039, Government Code.

In accordance with that above cited requirement, staff developed the attached schedule for review and consideration.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

Rule Review Plan

FY 2017–2020

Chapters and Subchapters to be Reviewed	Date of Review by Commission & Potential Changes Published for Comment	Date the Commission May Consider Potential Changes for Adoption
Section I	March 2017	July 2017
Title 7, Part 6, Chapter 97		
<ul style="list-style-type: none"> • Subchapter A – General Provisions • Subchapter B – Fees • Subchapter C – Department Operations • Subchapter D – Gifts & Bequests • Subchapter E – Advisory Committees 		
Section II	July 2017	November 2017
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter A – General Rules • Subchapter B – Organization Procedures • Subchapter J – Changes in Corporate Status • Subchapter L – Submission of Comments by Interested Parties 		
Section III	November 2017	March 2018
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter D – Powers of Credit Unions • Subchapter M – Electronic Operations • Subchapter N – Emergency or Permanent Closing of Office or Operation 		
Section IV	March 2018	July 2018
Title 7, Part 6, Chapter 93		
<ul style="list-style-type: none"> • Subchapter A – Common Terms • Subchapter B – General Rules • Subchapter C – Appeals of Preliminary Determination on Applications • Subchapter D – Appeals of Cease & Desist Orders and Orders of Removal • Subchapter E – Appeals of Orders of Conservation • Subchapter F – Appeal of Commissioner’s Final Determination to the Commission 		

Texas Rules for Credit Unions
Texas Administrative Code – Title 7, Parts 6 & 8

Chapters and Subchapters to be Reviewed	Date of Review by Commission & Potential Changes Published for Comment	Date the Commission May Consider Potential Changes for Adoption
Section V	July 2018	November 2018
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter G – Lending Powers 		
Section VI	November 2018	March 2019
Title 7, Part 6, Chapter 95		
<ul style="list-style-type: none"> • Subchapter A – Insurance Requirements • Subchapter B – Liquidating Agents • Subchapter C – Guaranty Credit Union • Subchapter D – Disclosure for Non-Federally Insured Credit Unions 		
Section VII	March 2019	July 2019
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter E – Direction of Affairs • Subchapter F – Accounts and Services 		
Section VIII	July 2019	November 2019
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter H – Investments • Subchapter I – Reserves & Dividends 		
Section IX	November 2019	March 2020
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter O – Trust Powers • Subchapter K – Residential Mortgage Loan Originators Employed by a CUSO 		
Section X	March 2020	July 2020
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter C - Members 		
Section XI	July 2020	November 2020
Title 7, Part 6, Chapter 91		
<ul style="list-style-type: none"> • Subchapter P – Other Forms of Equity Capital • Subchapter Q – Access to Confidential Information 		
Title 7, Part 8, Chapter 151		
Title 7, Part 8, Chapter 152		
Title 7, Part 8, Chapter 153		

COMMITTEE REPORT

D. (b) The Commissioner Evaluation Committee will Report on its Activities.

The Commissioner Evaluation Committee is a standing committee of the Commission. The purpose of the committee is to coordinate the annual evaluation of the commissioner's performance and oversee the development and maintenance of a commissioner's succession plan.

COMMITTEE MEMBERS

- Sherri B. Merket, Chair
- Allyson "Missy" Morrow
- Beckie Stockstill Cobb
- Kay Stewart
- Gary Tuma
- Manual "Manny" Cavazos, Ex-officio

The Commissioner Evaluation Committee met on July 7, 2016, in a public meeting to discuss the Commissioner's FY 2017 Performance Objectives and Goals. The Committee will report on its activities and highlight the procedures for the Commissioner's FY 2016 performance review.



CREDIT UNION COMMISSION
Commissioner Evaluation Committee Meeting
Credit Union Department Building
914 East Anderson Lane
Austin, Texas

Thursday, July 7, 2016
11:00 a.m.

* * * AGENDA * * *

- I. Call to Order (11:00 a.m.) – Committee Chair Sherri Merket
 - c. Ascertain Quorum
 - b. Appoint Recording Secretary
 - c. Acknowledge Guests

- II. Receive and Approve Minutes of the Committee’s Meeting on October 16, 2015

- III. New Business
 - a. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve the Commissioner's FY 2017 Performance Objectives and Goals
 - b. Discussion and Consideration of a Tentative Date for Next Committee Meeting (November 3, 2016)

Adjournment

Note: This is a meeting of the Commissioner Evaluation Committee of the Credit Union Commission; however, there may be other members of the Credit Union Commission attending this meeting. Since there might be a quorum of the Commission attending this meeting of the Commissioner Evaluation Committee, it is being posted as a meeting of the entire Commission.

Meeting Recess: 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.

COMMISSIONER'S PERFORMANCE REVIEW

The Commission's Policies Manual calls for an annual performance review of the Commissioner by an evaluation committee. The review is to be completed during the last Commission meeting of the calendar year. (The FY 2016 evaluation form was approved by the Commission during its October 16, 2015 meeting.)

Each Commission member will be required to complete an evaluation form. After the completed forms have been submitted, the Commissioner Evaluation Committee will review the appraisals, gather any other necessary information, and prepare a proposed evaluation. The proposed evaluation will be reviewed in Executive Session and may be edited or revised by the Commission prior to presenting it to the Commissioner. The final evaluation will be presented to the Commissioner.

The performance evaluation of the Commissioner is intended to accomplish the following:

- Clarify the Commissioner's leadership and management role as viewed by the Commission.
- Maintain a harmonious working relationship between the Commission and the Commissioner.
- Assure the Commission that the Department is being effectively administered by the Commissioner.

PROPOSED PROCEDURES

1. Each Commission member will receive electronic copies of both the Evaluation Form and a memorandum from the Commissioner outlining the Department's FY 2016 accomplishments by **September 15, 2016**.
2. Each Commission member will be asked to provide the Chair of the Commissioner Evaluation Committee with a copy of their completed evaluation form by **October 14, 2016**.
3. The Commissioner Evaluation Committee will meet on **November 3, 2016** to gather any pertinent information and prepare a proposed evaluation.
4. During the Executive Session of the Commission meeting on **November 4, 2016**, the Commission will have the opportunity to review, comment on and/or revise the proposed evaluation.



**CREDIT UNION DEPARTMENT
COMMISSIONER EVALUATION FORM
FY _____**

Name: _____

Date Employed _____ Date of Last Evaluation _____

I. 20__ Commission Assessment

Average results from the Commission Assessment Tally Sheet (Part I Attached) are:

$$\frac{\text{Average Points (Part I Average)}}{\text{Average Points (Part I Average)}} \times \frac{25\%}{\text{Weight}} = \frac{\text{Part I Score}}{\text{Part I Score}}$$

II. 2014 Performance Objectives

Average results from the Texas Credit Union Department Performance Grid (Part II Attached) are:

$$\frac{\text{Average Points (Part II Average)}}{\text{Average Points (Part II Average)}} \times \frac{75\%}{\text{Weight}} = \frac{\text{Part II Score}}{\text{Part II Score}}$$

III. 2014 Special Projects

Average results from the Texas Credit Union Department Performance Grid (Part III Attached) are:

$$\frac{\text{Average Points (Part III Average)}}{\text{Average Points (Part III Average)}} \times \frac{0\%}{\text{Weight}} = \frac{\text{Part III Score}}{\text{Part III Score}}$$

IV. Final Evaluation Score:

_____ Final Evaluation Score

*** The total of the weights must equal 100%**

BASE PAY ADJUSTMENT

A base pay adjustment earned for a performance level achieved is strictly at the discretion of the Commission.

Current Base Pay:		\$ _____
Pay Adjustment:	_____ %	\$ _____
New Base Pay:		\$ _____
Effective Date:	_____	

Additional Comments: _____

Commissioner Comments: _____

Commissioner Signature & Date

Evaluation Chair Signature & Date

Part I
Credit Union Department
Commission Member Assessment Form

Commission Member: _____

Below are comments attributed to the Credit Union Commissioner. Please indicate your agreement or disagreement with the statement as follows:

Strongly Disagree	Agree	Strongly Agree
1-----2-----3-----4-----5		

1. The Commissioner is effective at identifying strategic long-term needs of the Department and developing and implementing plans that result in achievement of these needs. Able to execute independent action and starts working without supervision.

Rating: _____

Comments:

2. I am satisfied with the level, quality and timeliness of information and communications provided to me by the Commissioner. This includes issues that may arise between Commission meetings of which the Commission should be aware.

Rating: _____

Comments:

3. The level to which the Commissioner directs or influences the operations, activities and performance of all subordinates. Demonstrates an atmosphere of teamwork and ability to motivate others to accomplish their goals. Ensures that the most efficient use is being made of all resources, including staff.

Rating: _____

Comments:

4. The Commissioner provides adequate focus on maintaining effective relationships with the governor's office, legislators and Credit Union leaders to ensure the continued safety and soundness of the credit union industry. Works well with NCUA to coordinate efforts for compliance and NASCUS for continued accreditation.

Rating: _____

Comments:

5. The Commissioner has the technical knowledge necessary to complete the job. Has the capability to hire the necessary personnel to move the department forward to save time and money, while still ensuring the safety of the information that is necessary to examiners to complete their assignments.

Rating: _____

Comments:

6. The Commissioner maintains a professional image at all times while representing the Department. The necessary leadership skills are present to command attention and respect, while displaying confidence in their ability.

Rating: _____

Comments:

Other Comments on the Commissioner's performance this past period:

SUM OF RATINGS: _____

AVERAGE POINTS: _____

II. PERFORMANCE OBJECTIVES

For each performance category, assign a rating from 1 to 5 based on the performance rating definitions described at the bottom of the form. Next, multiply the rating assigned by the weight shown and enter the result in the "weight x rating" box (i.e. 25% x 5 = 1.25).

PERFORMANCE OBJECTIVES	ACHIEVEMENT	W	R	WR
		E	A	E A
		I	T	I T
		G	I	I G
		H	N	H N
		T	G	T G
1. Production		25%		
2. Administration		25%		
3. Budgetary		15%		
4. Legislative		25%		
5. Industry		10%		
Total Score				
<p>PERFORMANCE RATINGS: The annual review will be classified in one of the following areas.</p> <p>1. UNSATISFACTORY: Employee is not performing the minimum requirements of the responsibility area in a satisfactory manner. Performance meets few or none of the key goals/standards. Improved performance is required for continuation in the position.</p> <p>2. BELOW REQUIREMENTS: Employee is not consistently performing all the requirements of the responsibility area. Performance is below expectations showing consistent weakness. Improved performance is necessary. Requires more than expected supervision.</p> <p>3. MEETS REQUIREMENTS: Employee is performing all requirements of the responsibility area. Performance is standard, although some requirements are performed above expectations and occasionally below. Performance meets most key goals/standards. Fully competent performer.</p> <p>4. EXCEEDS REQUIREMENTS: Employee is performing most requirements of the responsibility area consistently above expectations and significantly exceeds some requirements. Requires less supervision than expected.</p> <p>5. SIGNIFICANTLY EXCEEDS REQUIREMENTS: Employee is consistently performing all requirements of the responsibility area significantly above expectations. There are no weaknesses on key goals/standards. Makes significant contributions well beyond job demands.</p>				

Part II. Performance Objectives

1. Production

- Intervals between the effective dates of CU examinations shall not exceed 18 months.
- E-Time ratio shall not be less than 65% of available work time.
- 100% of reports of examination should be mailed within 20 days of last date on site.
- 100% applications submitted will be approved/denied not later than the 60th day after the date notice is published in the *Texas Register*.
- 100% of complaints will be responded to within 45 days.
- 100% of rule changes will be provided to credit unions within 60 days of adoption.
- Meet or exceed 90% of the Operating Plan's production targets within +/- 5% of the projected target.

2. Administration

- Attain and maintain at least 95% staffing level with continued.
- Participate in no less than 4 job fair events within the plan period.
- Post job vacancies within 7 days of notice of upcoming vacancy.
- Non-retirement turnover not to exceed 15% for plan period.
- Continue in the implementation and assimilation technology changes to increase efficiency.
- Conduct an annual examiner conference to ensure examiners receive adequate training to perform their duties.

3. Budgetary

- Ensure agency expenditures are necessary, prudent, and within budgetary constraints.
- Present quarterly financial statements to Commission and post on agency website
- Ensure compliance with all regulatory requirements for a SDSI agency
- Ensure revenues collected are adequate to cover expenditures and provide a cash reserve that complies with Commission policies.

4. Legislative

- Submit SDSI biennial and annual report filings in a timely manner.
- Prepare materials for the Legislature as requested or required.
- Respond timely to new legislative issues or requests for information or testimony.
- Remain active and involved at the national level on supervisory issues affecting credit unions.
- Attend at least one conference or training meeting during the plan period.
- Monitor and modify Texas Administrative Code rules as necessary.

5. Industry

- Continue to develop effective communication with credit unions and interested department stakeholders.
- Maintain an ongoing awareness of credit union risk profiles and the condition of the economy.
- Maintain continued accreditation from the National Association of State Credit Union Supervisors
- Publish a monthly newsletter for the industry
- Issue Interpretations and opinions within 30 days of request
- Share monthly accomplish report with Commission Members

**Part III
Special Projects/ Other Non-Quantifiable Objectives**

Commission Member: _____

Objectives	Weight	(1) Low Achievement	(2)	(3) Medium Achievement	(4)	(5) High Achievement
		()	()	()	()	()

E

UNFINISHED BUSINESS

Three pending items from previous meetings are being presented to the Commission for its information, consideration, and/or possible action. Specifically, the Commission will discuss and consider:

- (a) The Department's FY 2016 Financial Performance.
- (b) The Status of the State Credit Union System.
- (c) Possible Amendments to the Commission's Policy on the Carrying of Handguns at any Meeting.

RECOMMENDED ACTION: The Department requests that the Commission take action as indicated in the documents contained in **TAB E**.

FY 2016 FINANCIAL PERFORMANCE

E. (a) Discussion and Consideration of the Department's FY 2016 Financial Performance.

BACKGROUND: In February 2014, the Commission adopted a Strategic Plan for Fiscal Years 2015-2019. The \$3.7 million FY 2016 Budget, approved by the Commission, includes the operation and maintenance budget as well as the capital improvement budget in support of the second year of the Strategic Plan.

The following report highlights the Department's financial performance for the nine month period ending May 31, 2016.

The quarterly financial report is unaudited and is prepared on a cash basis of accounting. As required, most expenditures are expensed 30 day after the invoice due date.

RECOMMENDED ACTION: No action is anticipated.

Credit Union Department
 Operating Statement & Budget Analysis
 For the Period Ended 05/31/16

	FY 2016 Budget	FY 2016 YTD Budgeted Revenues	FY 2016 YTD Actual Revenues	Over (Under) Budget	Percent of Budget
REVENUES:					
Operating Income					
Operating Fees	\$3,245,027	\$3,245,027	\$3,245,814	\$787	100%
Out-of-State Branch Fees	\$9,500	\$9,500	\$10,500	\$1,000	110%
Examination Fees			\$1,725	\$1,725	
Application Fees			\$0	\$0	
Penalties		\$0	\$800	\$800	
Other			\$0	\$0	
Operating Income Subtotal	\$3,254,527	\$3,254,527	\$3,258,839	\$4,312	
Interest Income					
Interest Trust			\$2,360	\$2,360	
Interest USAS			\$0	\$0	
Interest Income Subtotal		\$0	\$2,360	\$2,360	
Refunds					
(vendors)			\$224	\$224	
Refunds Subtotal		\$0	\$224	\$224	
TOTAL REVENUES	\$3,254,527	\$3,254,527	\$3,261,423	\$6,896	100%
Excess Reserve Funds	\$411,754	\$411,754	\$411,754	\$0	
FY 2015 Payables	\$34,636	\$34,636	\$34,636		
<i>utilized to reduce operating fees</i>					
TOTAL FUNDS AVAILABLE TO COVER EXPENDITURES	\$3,700,917	\$3,700,917	\$3,707,813	\$6,896	

Credit Union Department
Operating Statement & Budget Analysis
For the Period Ended 01/31/16

	FY 2016 Budget	FY 2016 YTD Budget	FY 2016 YTD Actual	(Over)Under Budget	Percent of Budget
EXPENDITURES:					
Personnel Expenses:					
Salaries and Wages	\$2,255,221	\$1,691,412	\$1,582,694	\$108,718	94%
Employee Benefits	\$712,880	\$533,167	\$491,276	\$41,891	92%
Total Personnel Expenses	\$2,968,101	\$2,224,579	\$2,073,970	\$150,609	93%
Travel Expenses:					
In State	\$387,100	\$277,437	\$277,797	(\$360)	100%
Out-of-State	\$10,000	\$8,325	\$2,486	\$5,839	30%
Commission	\$11,000	\$7,862	\$6,438	\$1,424	82%
Total Travel Expenses	\$408,100	\$293,624	\$286,721	\$6,903	98%
Other Operating Expenses:					
Communication/Utilities	\$26,800	\$25,752	\$25,596	\$156	99%
Professional Services/Fees	\$70,154	\$52,976	\$37,917	\$15,059	72%
Supplies/Materials	\$38,320	\$12,735	\$28,464	(\$15,729)	223%
Printing and Reproduction	\$51,670	\$375	\$1,585	(\$1,210)	423%
Repairs/Maintenance	\$4,761	\$39,306	\$26,851	\$12,455	68%
Rentals and Leases	\$500	\$4,009	\$4,274	(\$265)	106%
Other Operating	\$132,511	\$40,249	\$34,441	\$5,808	86%
Total Other Operating Expenses	\$324,716	\$175,402	\$159,128	\$16,274	91%
TOTAL EXPENDITURES	\$3,700,917	\$2,693,605	\$2,519,819	\$173,786	93%
SURPLUS FUNDS AVAILABLE FOR FUTURE EXPENDITURES	(\$0)	\$1,007,312	\$1,187,994	\$180,682	

FINANCIAL CONDITION

E. (b) Discussion of the Financial Condition of the State Credit Union System.

BACKGROUND: The operating environment for Texas credit unions continues to reflect improvement as the economy continues to rebound and Texas cities continue to have a positive economic outlook. While dampened activity in the energy sector has impacted metropolitan areas to various degrees, positive performance in other industries will continue to propel employment and economic growth in the state's major cities at a level that will outpace national rates. With recovery in the oil industry, the pace of growth will accelerate. Texas credit unions, in general, are performing well and continue to realize positive loan growth, strong asset quality trends, good earnings performance and increased net worth positions. Boards and management are working hard to capture the financial business of their members; however, the costs associated with advancing technology, and achieving and maintaining regulatory compliance continue to create challenges for credit unions. To absorb these costs, improving operational efficiency remains critical, as well as the need to identify new non-interest income sources to generate revenue.

INDUSTRY STATUS: At **March 31, 2016**, there were **184** state-chartered credit unions in Texas. Assets in these credit unions totaled **\$35.77 billion**, which is an increase of **\$2.27 billion** since **March 31, 2015**, for an annualized growth rate of **6.33%**. The average net worth ratio rose to **9.99%**, down from **10.10%** at **March 31, 2015**.

Loans for Texas chartered credit unions totaled **\$24.62 billion** as of **March 31, 2016**. This is an increase of **\$2.30 billion** since **March 31, 2015** for an annualized growth rate of **10.3%**.

Shares for Texas chartered credit unions totaled **\$31.10 billion** as of **March 31, 2016**. This is an increase of **\$1.72 billion**, or **5.9%** since **March 31, 2015**.

Texas chartered credit unions average loan delinquency ratio was **0.63%** as of **March 31, 2016**, compared to a ratio of **0.50%** as of **March 31, 2015**.

At **March 31, 2016**, **39** state-chartered credit union reported net operating losses, compared to **40** at **March 31, 2015**. These credit unions reported aggregate negative net earnings of **\$1.29 million**; while the remaining **145** credit unions reported aggregate net income **\$55.20 million**.

PROBLEM INSTITUTIONS: There are **26** credit unions assigned a CAMEL rating of 3 or higher. Credit unions in this category are monitored through a combination of off-site monitoring, regular on-site contacts, and ongoing reviews for compliance with outstanding Documents of Resolution and other supervisory agreements or orders.

ENFORCEMENT ISSUES: The Department has the following administrative sanctions outstanding:

Dividend Restrictions	0
LUAs	0
Determination Letters	2
Conservatorships	1
Cease and Desist	1

Chartering Activity

New Charter	0
-------------	----------

RECOMMENDED ACTION: No formal action is anticipated.

CARRY OF HANDGUNS AND OTHER WEAPONS

E. (c) Discussion, Consideration, and Possible Vote to Take Action to Prohibit the Carrying of Handguns and Other Weapons at any Meeting of the Commission that is Subject to the Open Meetings Act under TEX. GOV'T CODE Chapter 551.

BACKGROUND: Effective January 1, 2016, under Senate Bill 273, 84th Legislature, TEX. PENAL CODE ch.46 was amended to prohibit carrying a handgun in plain view unless the person is licensed to carry a handgun under TEX. GOV'T CODE, ch. 411, subch. H, and the handgun is carried in a shoulder or belt holster. A license holder may carry a handgun anywhere in Texas that is not expressly prohibited by law. Those prohibitions appear in several provisions of the Texas Penal Code. For example, TEX. PENAL CODE §46.035 prohibits carrying of handguns and other weapons, among other places, at any meeting of a governmental entity (if the meeting is subject to the Open Meetings Act under TEX. GOV'T CODE ch. 551, and effective notice of prohibition is given under TEX. PENAL CODE ch. 30). Nothing in the statute requires a state agency to take the actions necessary to trigger the Penal Code provisions.

At the last meeting, the Commission tabled discussion related to carrying a handgun into a meeting. The pending question is whether, from a public policy perspective, the Commission wishes to impose any type of prohibition on handguns at its meetings.

RECOMMENDED ACTION: The Department recommends that the Commission adopt a policy that is consistent the weapons policy that will be used by the Office of the Governor.

RECOMMENDED MOTION: I move that the Commission approve the proposed changes to its Second Amendment Weapons Policy as recommended by staff.

Texas Credit Union Commission Policies Manual

XX. SECOND AMENDMENT WEAPONS POLICY

Effective January 1, 2016, Texas law expands the scope of a license to carry a concealed handgun to include authorization to openly carry a handgun in a secure fashion. This policy is adopted by the Commission to provide notice that serve as a framework for implementation of this law.

A. ~~Carrying a Handgun on Premises.~~ The the Credit Union Department will not impose any restriction on the carrying of firearms or other weapons beyond those mandated by the Texas Legislature. Accordingly, a licensed peace officer or an individual licensed under Chapter 411, Subchapter H, of the Texas Government Code may carry a handgun openly or concealed in the Credit Union Department Building in accordance with Texas law.

B. ~~Specific Exception.~~ The Texas Legislature has expressly prohibited members of the public and state employees who are licensed under Chapter 411, Subchapter H, of the Texas Government Code from carrying handguns at a government “meeting” that is held under the Open Meetings Act. The following notice shall be conspicuously posted at each entrance to such meetings:

Section 46.035 of the Texas Penal Code prohibits handgun licensees from carrying their handguns at government meetings such as this one. This prohibition applies to both concealed carry and open carry by handgun licensees. While the Credit Union Department welcomes handgun licensees to the maximum extent allowed by law, handgun licensees are required by law to refrain from carrying their handguns at this meeting.

Proposed Policy

XX. SECOND AMENDMENT WEAPONS POLICY

Effective January 1, 2016, Texas law expands the scope of a license to carry a concealed handgun to include authorization to openly carry a handgun in a secure fashion. This policy is adopted by the Commission to provide notice that the Credit Union Department will not impose any restriction on the carrying of firearms or other weapons beyond those mandated by the Texas Legislature. Accordingly, a licensed peace officer or an individual licensed under Chapter 411, Subchapter H, of the Texas Government Code may carry a handgun openly or concealed in the Credit Union Department Building in accordance with Texas law.

F

NEW BUSINESS

Two (2) new items are being presented to the Commission for its consideration and possible formal action. Specifically, the Commission will have:

- (a) Discussion, Consideration, and Possible Vote to Take Action to Approve Both the Department's Operating Plan and Budget for Fiscal Year 2017.
- (b) Next Commission Meeting – The next regular meeting of the Commission has been tentatively scheduled for November 4, 2016.

RECOMMENDED ACTION: The Department requests that the Commission take action as indicated on the documents contained in **TAB F**.

DEPARTMENT'S OPERATING PLAN AND BUDGET
FOR FY 2017

F. (a) Discussion, Consideration, and Possible Vote to Take Action to Approve Both the Department's Operating Plan and Budget for Fiscal Year 2017.

BACKGROUND: As detail in the following pages, the proposed budget for FY 2017 is \$3,935,394, which represents a 7.8 percent increase from the FY 2016 budget. In the proposed budget, the full-time-equivalent (FTE) staffing level increases by one examiner position to better allow our experienced examination staff to have time to work with our newer examiners to transfer critical knowledge and skills. The budget also includes an equity pay adjustment for our newer examiners, merit increase for other existing staff members as well as funding to begin the work to develop a database that will integrate with our SharePoint Document Repository and complete the projects in the Department's FY 2017-2019 Replacement/Capital Improvement Plan.

RECOMMENDED ACTION: The Department recommends that the Commission approve the proposed FY 2017 Operating Plan and Budget.

RECOMMENDED MOTION: I move that the Commission approve the proposed FY 2017 Operating Plan and Budget, with a total budget of \$3,935,394 and 29.5 FTEs.

BUDGET ASSUMPTIONS FOR FY 2017

The following broad assumptions were approved by the Commission on March 4, 2016, to establish the basic foundation for the development of the Department's FY 2017 budget and provide a framework to staff and the Commission for setting priorities, determining service levels, and allocating limited financial resources.

1. **Balance Budget** – In accordance with Commission policy, the budget will be balanced using FY 2016 ending reserve balance funds in excess of the aggregate contingency reserves limit.
2. **Contractual Obligations** – The Department intends to meet all contractual obligations. Purchase orders or contracts which were placed and committed prior to the end of FY 2016 for which the requested goods and services were not received or performed until after the start of FY 2017 are considered obligated funds. The budget authority for these obligated funds will automatically be carried over to FY 2017 and the FY 2017 budget will be increased by an amount exactly equal to the obligated amount.
3. **Compliance** – The budget shall provide sufficient funding to continue compliance with all applicable statutes, governmental requirements, administrative rules, and Department policy in regulating and supervising the safety and soundness of credit unions.
4. **Strategic Plan Initiatives** – Consistent with the FY 2017-2021 strategic plan, the budget will provide appropriate funding to implement the delineated initiatives for FY 2017.
5. **Salary and Benefits** – The expenditures for FY 2017 will be based on authorized and existing positions as of August 31, 2016 and include any scheduled salary increases/promotions prescribed in the *Salary Administration Plan for Examination Staff*. Filled positions will be budgeted at the actual salary for the individual in that position and vacant positions will be budgeted at the mid-point of the salary range for the positions. Employee Benefits will be automatically calculated on all salaries with the appropriate benefit rates established for state agencies.
6. **Merit Increases** – To foster, support, and reward outstanding performance and to retain key high performing staff, aggregate merit increase awards for staff will not exceed an amount equivalent to 3.5% of the total salaries for those positions and will be awarded based on the established merit pay

- tiers. The corresponding increase in Employee Benefits, resulting from the proposed merit awards, will also be properly reflected in the budget.
7. **Inflation Factor** – No inflationary increases are anticipated, with the exception of increases in the cost of utilities and travel.
 8. **Statewide Indirect Cost** – Statewide indirect cost allocations are a result of a statewide plan established by the Comptroller of Public Accounts. Changes in indirect cost allocations are anticipated to be allowable budget adjustments.
 9. **Out-of-State Travel** – Travel related to regulatory matters, including examinations, inspections, and training will be exempt from the limitations on out-of-state travel; expenditures for all other out-of-state travel by the Department will not exceed \$10,000.
 10. **Electronic Document Management System** – The budget shall provide funding to continue implementation of the next phase of the electronic document management solution and cover the associated annual cost for the capture and storage of documents.
 11. **Information Technology** – The budget shall provide sufficient funding for computer network upgrades and computer equipment replacement in accordance with the Information Resources Strategic Plan.
 12. **Improvements** – The budget shall provide sufficient funding for scheduled maintenance and repairs in accordance with the Replacement/Capital Improvement Plan.
 13. **NASCUS Dues** – The budget shall provide sufficient funding to accommodate the projected increase in the professional association’s dues.
 14. **Accreditation Fees** – The budget shall provide sufficient funding to accommodate the fees associated with the Department’s continued NASCUS accreditation.
 15. **Overnight Travel Stipend** – The budget shall provide sufficient funding to pay examiners an overnight travel stipend in accordance with the qualifying conditions included in the Department’s policy. The stipend will not be considered a one-time merit award and may be paid to the eligible examiners regardless of their last merit pay or promotion action.

SUMMARY OF PROPOSED FY 2017 BUDGET

Budget Needed to Continue Existing Services \$3,645,281

Strategic Initiatives:

Priority #1 – Equity Adjustment FE I & FE II	\$ 69,157
Priority #2 – Merit Increase Funding Pool	\$ 74,704
Priority #3 – Increase Examination Force	<u>\$ 86,675</u>

Total Strategic Initiatives \$ 230,536

Replacement/Capital Improvement Plan \$ 59,577

Grand Total Agency Requested Budget \$3,935,394

Full-Time-Equivalent Positions 29.5

BUDGET NEEDED TO CONTINUE EXISTING SERVICES

FY 2017 Base Budget Reconciliation

Object of Expenses	FY 2016 Budget	Adjustment	Base FY 2017
Salaries and Wages	\$2,255,221		\$2,255,221
Payroll Related Costs	712,880		712,880
Travel	408,100		408,100
Professional Services/Fees	61,436	<\$55,636 ¹ >	5,800
Supplies /Materials	35,518		35,518
Communication/Utilities	38,320		38,320
Repairs/Maintenance	51,670		51,670
Rentals and Leases	5,520		5,520
Printing and Reproduction	2,855		2,855
Other/State of Texas Services	129,397		129,397
Grand Total	\$3,700,917		\$3,645,281

¹ One-time expenditures related the development of the Department's Electronic Document Management System and the Website Refresh

OVERVIEW OF AGENCY REQUESTED FY 2017 BUDGET

Proposed Budget With Strategic Initiatives

Object of Expenses	Base Budget	Strategic Initiatives	Budget Request
Salaries and Wages	\$2,255,221	\$158,598	\$2,413,819
Payroll Related Costs	712,880	50,117	762,997
Travel	408,100	20,821	428,921
Professional Services/Fees	5,800	10,000	15,800
Supplies /Materials	35,518	1,000	36,518
Communication/Utilities	38,320		38,320
Repairs/Maintenance	51,670	49,577	101,247
Rentals and Leases	5,520		5,520
Printing and Reproduction	2,855		2,855
Other/State of Texas Services	129,397		129,397
Grand Total	\$3,645,281	\$290,113	\$3,935,394

Projected Revenues and Proposed Expenditures

Projected Revenues	\$4,028,027
Proposed Expenditures	\$3,935,394
Surplus Revenues	\$92,633
Percentage Increase over FY 2016 Budget	7.8%

REVENUE HISTORY

Fiscal Year 2013

Total Fees Prescribed by Rule 97.113(b)	\$3,440,640
Discount Permitted by Rule 97.113(d)	<\$ 707,372>
Actual Assessment Collected	\$2,733,268

Fiscal Year 2014

Total Fees Prescribed by Rule 97.113(b)	\$3,577,469
Discount Permitted by Rule 97.113(d)	<\$ 771,355 >
Actual Assessment Collected	\$2,806,114

Fiscal Year 2015

Total Fees Prescribed by Rule 97.113(b)	\$3,751,870
Discount Permitted by Rule 97.113(d)	<\$ 323,434 >
Actual Assessment Collected	\$3,428,436

Fiscal Year 2016

Total Fees Prescribed by Rule 97.113(b)	\$3,913,383
Discount Permitted by Rule 97.113(d)	<\$ 674,804 >
Actual Assessment Collected	\$3,238,579

REVENUE PROJECTIONS

Projected Fiscal Year 2017 (Using Assets as of March 31, 2016) ²	
Potential Fees – Rule 97.113(b)	\$4,028,027 ³
Proposed Budget FY 2016	<\$3,935,394 >
Potential Discount – Rule 97.113(d)	\$92,633

Note: As required by Commission policy, staff has review all fees established by Rule 97.113 and recommends that the Commission make no changes to the fee structure at this time. The fees are currently at a level that ensures the recovery of the full cost of operating the Department and the Rule will be formally reviewed in March 2017.

² Actual fees will be based on assets as of June 30, 2016

³ Actual fees will be based on assets as of June 30, 2016

PERFORMANCE MEASURES

Measure	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016 (YTD)
Number of Credit Unions	195	190	188	185	184
Credit Union Total Assets (billions)	\$27.4	\$29.3	\$31.6	\$33.8	\$35.8
Percent Increase in Credit Union Total Assets	12.7%	6.9%	7.8%	7.0%	5.9%
Total Department Cost to Every \$100,000 in Assets Regulated	\$10.75	\$10.44	\$10.62	\$9.24	
Average Regulated Assets per Examiner (millions)	1.73	1.84	1.76	1.88	1.78
Number of Examinations	170	160	163	156	121
Percent of Credit Union Examined	87%	84%	87%	84%	66%
Percent of Credit Union Assets Examined	90%	89%	91%	92%	68%
Assets Examined per Examiner Day (millions)	1.56	1.64	1.60	1.74	1.52
Number of Remedial Contacts	43	44	44	38	25
Percent of Credit Unions Rated 1 or 2 (CAMELS)	79%	82%	85%	82%	86%
Percent of Assets in 1 or 2 Rated Credit Unions (CAMELS)	80%	83%	83%	82%	84%
Percent of Well-Capitalized Credit Unions	95%	95%	97%	97%	98%
Number of Credit Unions Rated 3, 4, or 5 (CAMELS)	41	33	30	33	27
Annual Examiner Turnover	12.5%	6.3%	11.1%	22.2%	
Average Tenure of Departing Examiners (Months)	31	16	54	50	26
Number of Examiners Hired	3	2	4	3	5
Annual Staff Turnover	8.2%	16.3%	10.9%	18.2%	
Number of Formal Examiner Training Days	140	134	127	169	
Number of Applications Processed	60	49	66	57	44
Number of Request – Interpretation/Opinion	3	4	5	4	2
Number of Public Information Requests	30	17	13	18	20
Number of Written Credit Union Complaints Received	174	223	230	253	201

Strategic Initiatives Funding Request

STRATEGIC INITIATIVE FUNDING REQUEST #1

Initiative Name: **Equity Adjustment for Financial Examiners I and II**

Initiative Priority: **1**

EQUITY ADJUSTMENT FOR FINANCIAL EXAMINERS I AND II	
Objects of Expense	Estimated Costs
Salary & Wages	\$52,551
Payroll Related Costs	\$16,606
Travel Expenses	
Other Operating Expenses	
Total	\$69,157

Description/Justification: Ensuring Texas has a safe and sound credit union system is a compelling mandate. Assessing credit unions' safety and soundness requires examination by skilled examiners, and the ability to retain qualified examiners is an essential component in meeting this objective. Credit unions have grown in complexity and sophistication, requiring more skilled examiners to effectively evaluate their activities. It is, therefore, essential that the Department keep examiner turnover at a minimum.

Virtually all of the Department's examiner talent is homegrown. Typically, the Department hires new college graduates, and following a development period of three to five years, examiners are deemed independently competent to handle most any situation. Unfortunately, the Department often finds itself in an almost constant process of hiring and replacing journeyman examiners who leave before they have reached a tenure where they are fully capable and productive. Specifically, the Department service of an examiner who was hired during the last ten fiscal years and has subsequently either voluntarily or involuntarily departed is, on average, about 26 months. While this average time of service has risen in recent years, this continuing cycle of examiner hiring and replacement is a drain on the agency's resources that could be better utilized to improve examination quality and examiner achievement.

A more detailed information on the Department's cycle of hiring and replacing examiners is shown below:

New Hire's Average Tenure When Exiting

Fiscal Year	# Examiners Hired	# Still on Staff	Average Tenure
2006	5	0	33 months
2007	1	0	1 month
2008	2	0	25 months
2009	3	0	26 months
2010	4	2	35 months
2011	0	-	-
2012	3	0	40 months
2013	2	0	30 months
2014	4	3	22 months
2015	3	3	-
2016	5	5	-
Total	32	13	26.5 months

Examiner turnover has historically been highest among the examination staff who have been employed for three years or less. As of April 30, 2016, over 73% of the field examiners had less than three years of Department service.

Field Examiner Tenure with CUD

Years of Service w/Department	Number of Examiners	Existing Percentage of Field Examiners	Ideal Percentage of Field Examiners
Less than two years	10	66.6%	10%
Two to five years	1	6.7%	10%
Five to ten years	0	-	25%
Ten to fifteen years	0	-	25%
Over fifteen years	4	26.7%	30%
Total	15	100%	100%

Within the boundaries of financial feasibility, the Department's compensation program must be externally competitive in order to attract, retain, and reward qualified individuals. When an individual has the potential to go elsewhere at a higher salary, there is an opportunity cost to stay at the Department. Before those opportunity costs gets any larger, it is important for the Department to redress the current inequities with the salaries being paid to the Department's Financial Examiner I and IIs with those being paid by the Texas Department of Banking (TDB) for the equivalent positions.

As indicated below, circumstances outside the Department's control have adversely affected the relative position of the journeyman examiners' salaries that cannot be handled by typical annual merit increases.

Salary Comparison with Department of Banking

Title	CUD*	TDB*
Financial Examiner I	\$ 44,255	\$49,284
Financial Examiner II	\$ 50,512	\$56,304

* Average of salaries being paid for respective positions

Rewarding our journeyman examiners with a competitive salary is one the best ways to hold onto the good ones. As indicated in the above Table, the competitiveness of the salaries being paid to these less tenured examiners has eroded over the years. Accordingly, this initiative implements a performance based salary adjustment plan for the journeyman examination staff to bring our compensation structure more in line and competitive with the TDB. Experience has demonstrated that over the long term, agencies pay the cost of ignoring problems related to salary inequities. As the job market continues to pick up, we must remain especially attuned to even the perceptions of salary inequity and the risks it poses to our ability to continue to attract, retain, and motivate the talent we need.

The Department dedicates considerable resources (time and money) in an effort to hire and retain examiners who “best fit” the job and who enjoy putting in the effort to accomplish the Department’s mission and goals. Training during the developmental period provides a journeyman examiner the skills needed to effectively and independently perform their assigned duties. The ability to retain journeyman examiners is essential to the Department success.

External/Internal Factors: There is probably no one factor more critical to the Department’s overall success or its ability to accomplish its mission than its examination staff. Acquiring, developing, and retaining a competent, highly motivated, and diverse examination workforce is one of the Department’s top priorities and is one of its four strategic goals. At the same time significant external factors affect the Department’s current and future examination workforce, challenging the Department’s ability to ensure that the right people are in the right positions at the right time. An equity adjustment for those staff members classified as either a Financial Examiner I or Financial Examiner II should be made in recognition of the influences that has caused these examiners’ compensation levels to move out of line with their responsibilities from external competitive market conditions.

STRATEGIC INITIATIVE FUNDING REQUEST #2

Initiative Name: **Merit Increase Funding Pool**

Initiative Priority: **2**

MERIT INCREASE FUNDING POOL	
Objects of Expense	Estimated Costs
Salary & Wages	\$56,766
Payroll Related Costs	\$17,938
Travel Expenses	
Other Operating Expenses	
Total	\$74,704

Description/Justification: Recognizing and rewarding high performance is a key priority for driving excellence at the Department. When budgeted, all classified staff members participate in the Department's merit pay program. The last merit increases for the staff was budgeted for September 1, 2015.

The Department is proposing to establish a pool to fund merit and promotion increases for staff. The aggregate amount of the pool will be equivalent to 3.5% of the total salaries for the applicable staff positions. All awards made from the pool will be based on performance.

Merit pay has traditionally been one of the most effective tools of motivating staff to perform to the best of their ability. It is recognition for the staff who achieve the highest productivity and results for the Department. A monetary reward in terms of a better pay is the strongest incentive for staff who are working with a greater enthusiasm, commitment and skills than the other staff members around them. In addition, a healthy competitive spirit among staff can propel them to achieve superior results for the agency. Competition is a natural human instinct, and merit pay capitalizes on that instinct to extract the best performance from the staff. Staff also likes to be recognized as achievers, and this program is one of the best ways to award that recognition.

In absence of a merit based pay program, there is the risk of discouragement for the highest performing staff. Talented staff is aware of their strengths and like to accept the challenges of a performance linked pay. If they find that all staff is awarded a uniform pay without any regard to individual merit, there is a risk of the best performing staff leaving the Department.

External/Internal Factors: Although the economy is improving and job market is more robust, salary increase budgets for U.S. companies continue to show little signs of growth. According to several surveys, the average salary increase budget is expected to be 3.0% in 2016, up slightly from the average increase budget in 2015.

Total U.S. Salary Budget Increases				
Employee Category	Actual 2015 Mean	Actual 2015 Median	Projected 2016 Mean	Projected 2016 Median
Nonexempt hourly	2.9%	3.0%	3.0%	3.0%
Nonexempt salaried	3.0%	3.0%	3.1%	3.0%
Exempt salaried	3.0%	3.0%	3.1%	3.0%
Officers/executives	3.0%	3.0%	3.1%	3.0%
All	3.0%	3.0%	3.1%	3.0%

Source: WorldatWork 2015-2016 Salary Budget Survey report.

The "mean" is the mathematical average while the "median" is the middle value after listing reported budget increases in successive order. Outliers, or extreme values on either the high or low end, have the biggest effect on the mean and less effect on the median.

U.S. companies incentive pay programs are usually budgeted separately from salary increases. The average amount budgeted for variable pay is a percentage of the total base salaries in that category. Spot bonuses in lieu of merit increases are on the rise.

Variable Pay Program Budgets, 2015 and 2016								
	Nonexempt Hourly		Nonexempt Salaried		Exempt Salaried		Officer/Exec.	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
2015 % budgeted	5.3%	5.0%	6.0%	5.0%	12.6%	12.0%	38.3%	35.0%
2016 % budgeted	5.4%	5.0%	6.1%	5.0%	12.7%	12.0%	38.1%	35.0%

Source: WorldatWork 2015-2016 Salary Budget Survey report.

WorldatWork 2015-2016 Salary Budget Survey is the largest survey of its kind with 5,583 responses from 19 countries representing 15 million employees.

The survey results further indicate that even though the size of all salary increase budgets, including merit budgets, remains on the conservative side, there is still good evidence of differentiation of awards. Looking at employee performance in 2014, organizations averaged a 2.7 percent merit increase for midlevel performers (median: 2.8 percent) and a 4.0 percent payout for top performers (median: 4.0 percent).

STRATEGIC INITIATIVE FUNDING REQUEST #3

Initiative Name: **INCREASE EXAMINATION FORCE**

Initiative Priority: **3**

INCREASE EXAMINATION FORCE	
Objects of Expense:	Estimated Costs (\$)
Salary & Wages	\$49,281
Payroll Related Costs	\$15,573
Travel Expenses	\$20,821
Equipment Costs	\$1,000
Total	\$86,675

Description/Justification: Funding of this item is imperative for the Department to maintain an adequate level of supervision to meet regulatory responsibilities and achieve established performance measures. Credit unions continue to grow in size, and the complexity of the industry is constantly changing due to technological, legislative, and economic issues. This growth in complexity and sophistication requires knowledgeable field examiners to properly evaluate their activities. No single factor is more critical to the Department's ability to accomplish its mission and to its success, than its staff.

Strong, effective and independent supervision is critical to ensure a sound credit union system. Successful supervision gives credit union management a valuable secondary perspective and bolsters the work of credit unions' risk management staff and structures. Supervision also acts as an essential discipline on the industry as a whole by setting risk management standards and providing a source of challenge against any relaxation of controls or build-up of risk in individual credit unions. In doing so, effective supervision can contribute to greater financial stability and reduce both the likelihood of individual credit unions failing and their potential impact if they do so. Getting supervision right is in everyone's interest, both the government and the credit union industry.

At a minimum, to ensure that supervision is credible and effective, the Department needs one additional field examiner. Credit unions have become a bigger and more important player in the economic development of this State, and without the additional examination resources the Department cannot keep pace and carry out its duties and responsibilities with the expertise credit unions deserve. Ultimately, an understaffed examination workforce will impair the

Department's ability to protect Texas citizens from fraud, unethical conduct and other deviations from appropriate standards in connection with financial transactions.

Key considerations in making this staffing decision, include:

- 1) Work/Life Balance: The Department has been doing the best it can under the current staffing levels; however, examination resources are not sufficient to perform all of the required work and provide an adequate work/life consideration into the examination program. An adequate work/life balance is an essential element in enhancing employee retainage, improving the quality of examinations and maintaining high levels of staff productivity and morale. Furthermore, the approval for funding this strategic initiative will begin the process of becoming less reliant on NCUA Specialists to staff complex exam functions, will provide time for field examiners to properly scope an examination and write the final report of examination, reduce travel days per examiner and reduce the instances where examiners must be the examiner-in-charge of back-to-back examinations. Workload and travel levels are crucial issues that need to be addressed to encourage employee retention. Failure to retain valuable human resources deprives the Department of expertise and is a substantial loss of investment in recruitment, training and development.

An adequate work life balance was the topic cited most negatively within the 2015 Department staff survey as indicated under the survey category, "job satisfaction". When the following statement was posed to staff: "My work environment supports a balance between work and personal life", only 42 percent of the 24 respondents were in agreement. The statement which resulted in the second lowest positive response was: "The amount of work I am asked to do is reasonable". Only 46 percent of 24 respondents agreed with this statement. (Exhibit A-1 thru A-3).

Upon review of key examination staff workloads it was observed that during 2015, the five highest level examiners (FEVs and FEVIs) were assigned a total of 63 examinations on credit unions with assets totaling approximately \$21.6 billion. The total assets assigned to these examiners (29 percent of examination staff) constituted approximately 65 percent of all the credit union assets which the Department regulates. Thus, the departure of any one of these key examiners would create a significant gap in our current examination processes. Furthermore, these more experienced examiners are relied upon to train and provide guidance to the less tenured examiners, which can pose additional workload pressures.

Credit Unions/Assets Examined 2015 – Senior Field Staff					
FE V #1	FE V #2	FE V #3	FE VI #1	FE VI #2	Total
17/\$4.0 B	16/\$5.1 B	17/\$4.6 B	5/\$2.4 B	8/\$5.5 B	63/21.6 B

- 2) Back to Back Examinations: Due to staffing levels encountered during 2015, the five high level examiners performed a total of 27 back to back examinations during the year, or 42.8 percent of their total assigned examinations were "back to back", as shown below:

Back to Back Exams (#) and Percent (%) of Total Assigned Credit Unions – Senior Field Staff						
	FE V #1	FE V #2	FE V #3	FE VI #1	FE VI #2	Total
Number	12	7	4	2	2	27
Percent	70.6	43.7	23.5	40.0	25.0	42.8

Back to back examinations expose the examiner-in charge to a high level of work load pressure as he/she is expected to complete the examination report from their prior week examination, while at the same time conduct a new examination. In addition, field examiners are generally in a travel status 40 to 50 percent of the time. This, coupled with the number of back to back examinations, results in time management constraints where little time is available for writing examination reports or analyzing and scoping examinations before arriving at a credit union. This type of grind is difficult to maintain on a consistent basis without hindering an examiner's work performance and may eventually result in significant morale issues and even his/her departure from the agency. As noted in the 2017-2021 Strategic Plan approved by the Commission in March 2016, the Department believes the examination staffing model needs revision to allocate a maximum of 160 annual examination days per examiner, from the prior level of 180.

- 3) Training and Mentoring of Examination Staff: The Department needs to devote additional resources to mentoring and supporting newly hired field examiners to ensure they obtain the skills and experiences necessary to fulfill the Department's supervisory responsibilities. The current staff model does not allocate sufficient time for the regional supervisors to regularly perform this critical function. Instead, the majority of a regional supervisor's time is consumed performing examinations. It is vital to our future success, that the regional supervisors (and other senior staff) be afforded adequate time for training and transfer of knowledge to less tenured staff. Presently, over 66 percent (10 out of 15 examiners) of the current field examiners have total years of service with the Department of less than 2 years. The short level of tenure for the majority of our field examiners further supports the need for the regional supervisors to devote a majority of their time for examiner development, including training and mentoring. The following represents a breakdown of the current examination field examiners' tenure, by years of service:

Field Examiner Tenure with CUD		
Years of Service w/Department	Number of Examiners	Percentage
Less than two years	10	66.6
Two to five years	1	6.7
Five to ten years	0	0.0
Ten to fifteen years	0	0.0
Over fifteen years	4	26.7
Total	15	100.0

Statewide Examination Staffing Plan Projections for Fiscal Year 2017

Asset Size	CAMELS Ratings	Aggregate Total Assets (millions)	Exam Cycle	Number CUs	Budgeted Examiner Days (Regular Exams)	Projected Annual Examiner Days ⁴	Budgeted Examiner Days (Remedial Exams)
Under \$50 Million	1	147.6	18	9	81		
	2	1,314.2	18	77	696		
	3, 4 or 5	173.0	12	16	140		83
\$50-\$100 Million	1	220.9	18	3	50		
	2	1,226.8	18	17	286		
	3, 4 or 5	569.5	12	8	171		40
\$100-\$250 Million	1	497.5	18	3	83		
	2	2,912.8	18	17	446		
	3, 4 or 5	426.8	12	3	94		15
\$250-\$500 Million	1	0.0	18	0	0		
	2	3,802.2	18	11	363		
	3, 4 or 5	282.4	12	1	42		10
\$500-\$1 Billion	1	5,298.8	18	7	308		
	2	3,361.5	18	5	220		
	3, 4 or 5	821.3	12	1	55		10
Over \$1 Billion	1	4,295.5	12	2	88		
	2	4,392.0	12	3	132		
	3, 4 or 5	3,801.3	12	2	110		20
Totals	1	6,164.8	18	22	521	348	0.0
	1	4,295.0	12	2	88	88	
	2	12,617.5	18	127	2,010	1,340	0.0
	2	4,392.0	12	3	132	132	
	3, 4 or 5	6,074.3	12	31	611	611	178
	Total		33,544.1		185	3,057	2,519

⁴ Projected annual examiner days based on NCUA adopting an extended examination schedule of eighteen months for those credit unions with less than \$1 billion in total assets and a CAMELS composite rating of a code 1 or a code 2. All other examinations are assumed to be conducted at a twelve-month frequency.

Using the budgeted examiner days for regular examinations and remedial examinations (code 3, 4 and 5 credit unions), a computation was performed using 160 annual examination days per examiner, resulting in a total number of full time field examiners necessary to achieve the Department productivity goals is 17.

Full-Time Examiners Need to Complete Examination Program	
FY 2017 Regular and Remedial Examination Days	
Regular Examination Days	2,519
Remedial Examination Days	178
Total	2,697
Average Annual Examination Days Per Examiner	
	160
Total Full-Time Examiners Needed for FY 2017	
	16.86

The total full-time field examiners needed for fiscal year 2017 excludes the two regional supervisor positions, as the intent is to reduce their level of participation on examinations. This will allow them to mentor and train their respective examination teams and perform a greater degree of regulatory and supervisory oversight for the credit unions within their respective regions. A knowledgeable, well-trained examination team is paramount to the overall success of the Department and also provides a greater degree of career progression and advancement opportunities to field staff. Presently, we have 16 full-time field examiner positions budgeted (excluding the regional supervisors), meaning one additional examiner FTE position is needed.

External Factors: External factors are also driving the need to increase examination staff. Changes in the economy, interest rate movements, and investment products are constantly shifting and require a thorough understanding of these dynamics. Whether the economy is booming or sagging, it is essential that the Department focus its efforts toward those areas and institutions that represent the greatest risks to both the credit union and its members. Technology continues to evolve, and the safe guarding of member information deserves the utmost attention. Further, competitive salaries to retain/attract qualified personnel along with the availability of external training will control the readiness of our examination staff to meet these challenges.

Over the last three years, the NCUA has continued to reduce its scheduled level of participation on federally insured state chartered credit unions, from a high of 94 credit unions in 2014 to 58 in 2016, a reduction of 38.3 percent. A similar scheduled reduction in the number of exam days allocated by NCUA for state chartered credit unions has been observed, with the total days being reduced from a high of 1402 days in 2014 to 1079 days in 2016, a reduction of 323 days

or 23.03 percent. The reduced participation by NCUA also provides support for the need of one additional field examiner based upon annual examination days per examiner of 160.

Joint Examinations – NCUA					
(Per Joint Schedule – Last 3 Years)					
Description	2014	2015	2016	Change (# or \$)	Change %
# Credit Unions	94	76	58	-36	-38.30
Assets (Billions)	\$15.7	\$25.7	\$23.1	\$7.4	47.13
Budgeted Hours	11,215	10,013	8,632	-2,583	-23.03
Budgeted Days	1,402	1,252	1,079	-323	-23.03

It should be further noted that other state credit union regulatory agencies, as well as other Texas state agencies who regulate financial institutions, do not appear to have similar workload expectations of their field examination teams, as our agency does. When comparing key metrics associated with five state credit union regulatory agencies and two Texas state agencies, the results reflect a workload by Department (CUD) examiners which is astoundingly higher than that of examiners from the other states and other Texas state agencies. The following represents a breakdown of comparative data:

FY 2015 Examinations - State CU Regulators						
Regulatory Agency	# CUs	Total Assets (Billions)	Number of Exams	Number of Remedial Exams	Number of Examiners	Exams Per Examiner
California	144	\$89.6	102	14	36	2.8
Florida	68	\$34.5	49	-	14	3.5
Michigan	161	\$40.4	137	54	40	3.4
Ohio	144	\$18.3	126	46	14	9.0
Washington	56	\$39.8	77	-	16	4.8
Totals	573	\$222.6	491	114	120	23.5
Average	114.6	\$44.5	98.2	22.8	24	4.7
CUD	185	\$33.9	156	38	17	9.2
Variance to Average	+70.4	-10.6	+57.8	+15.2	-7	+4.5

FY 2015 Examinations - Texas Financial Regulatory Agencies

Regulatory Agency	# Institutions	Total Assets (Billions)	Number of Exams	Number of Remedial Exams	Number of Examiners	Exams Per Examiner
TX S&ML	27	\$12.0	25	-	12	2.1
TX Banking	252	\$247.0	124	-	111	1.1
Totals	279	\$259.0	149	0	123	3.2
Average	139.5	\$129.5	74.5	0	61.5	1.6
CUD	185	\$33.9	156	38	17	9.2
Variance to Average	+45.5	-95.6	+81.5	+38	-44.5	+7.6

Internal Factors: Internal factors include budget constraints and impediments to improve the quality/level of experienced personnel. Unforeseen turnover and/or the lack of funds for adequate training could impair the Department's capability to meet these objectives. The Department continues to work closely with the NCUA to minimize regulatory burden and maximize efficient use of personnel.

EXHIBIT A-1

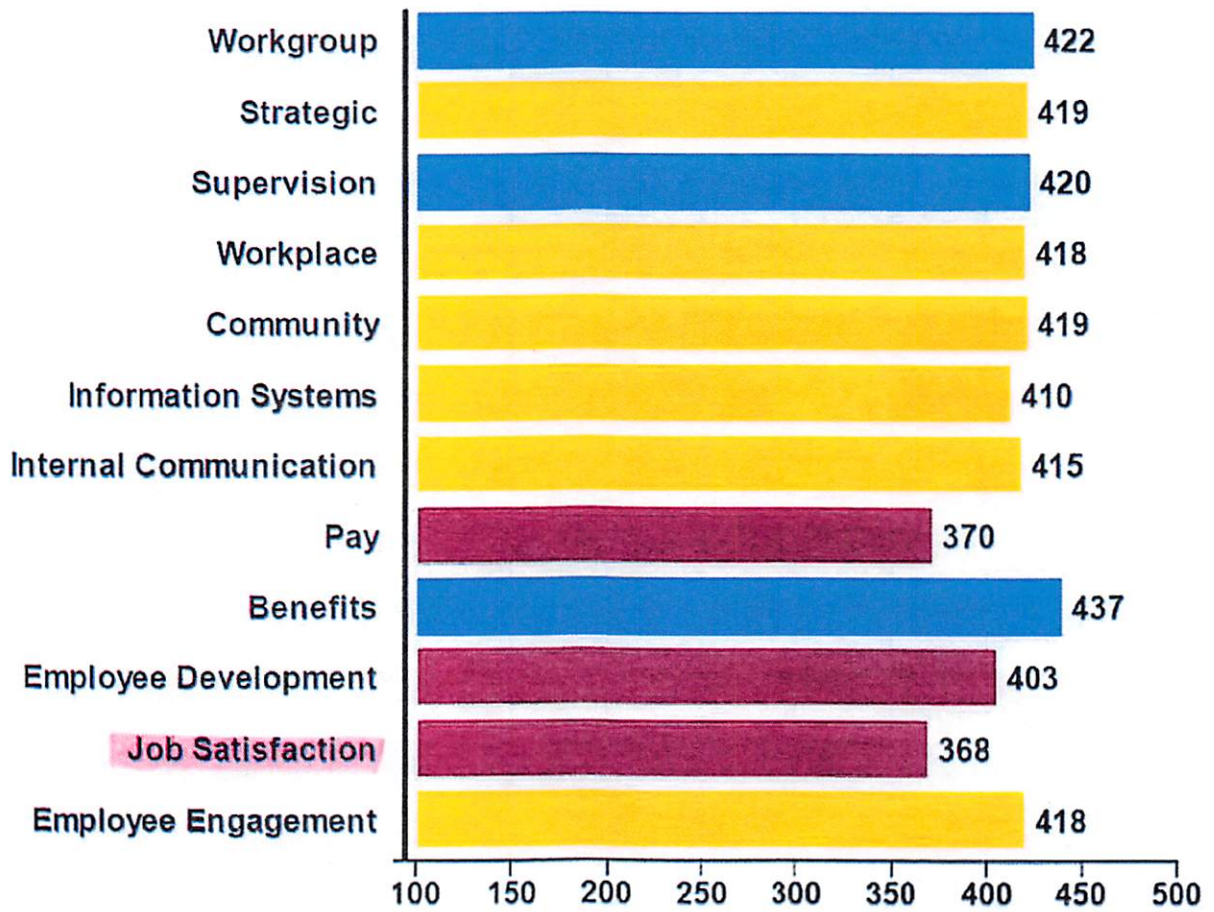


EXHIBIT A-2

Areas of Concern

Job Satisfaction – 368 The job satisfaction construct captures employees' perceptions about the overall work situation and ability to maintain work-life balance. Lower scores suggest that employees feel overworked, unable to perform at their best and unhappy with their work.

Pay – 370 The pay construct captures employees' perceptions about how well the compensation package offered by the organization holds up when compared to similar jobs in other organizations. Lower scores suggest that pay is a central concern or reason for discontent and is not comparable to similar organizations.

Employee Development – 403 The employee development construct captures employees' perceptions about the priority given to their personal and job growth needs. Lower scores suggest that employees feel stymied in their education and growth in job competence.

Primary Items

For the primary items (numbered 1-48), participants were asked to indicate how they agreed with each positively phrased statement. If participants did not have information or the item did not apply, they were to select don't know/not applicable. The following definitions correspond to survey items:

Response Data

Score is calculated by averaging all item responses on a five point scale ranging from 5=Strongly Agree to 1=Strongly Disagree. If the participant selected Don't Know/Not Applicable, their response is considered a valid response, but it is not used in the calculation of the score.

Standard Deviation calculates the level of agreement. Large deviations indicate greater levels of disagreement. For this report, you can expect standard deviations to be between .7 and 1.10.

Total Respondents is the number of valid responses including Don't Know/Not Applicable. If everyone did not answer every item, the number of respondents for an item is less than the number of respondents reported in your response rate.

Respondents is the number of participants who selected each item (strongly agree, agree, etc.).

Percentage is the number of participants who selected each item (strongly agree, agree, etc.) divided by the total number of valid responses.

Percent Agreement is the number of participants who agreed with the item (strongly agree or agree) divided by the total number of valid responses.

EXHIBIT A-3

39. My work environment supports a balance between work and personal life.

42% Agreement

Response	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know/NA
Respondents	4	6	6	7	1	0
Percentage	16.67%	25.00%	25.00%	29.17%	4.17%	0.00%

40. I feel free to be myself at work.

80% Agreement

Response	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know/NA
Respondents	7	13	4	1	0	0
Percentage	28.00%	52.00%	16.00%	4.00%	0.00%	0.00%

41. The amount of work I am asked to do is reasonable.

46% Agreement

Response	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know/NA
Respondents	4	7	8	4	1	0
Percentage	16.67%	29.17%	33.33%	16.67%	4.17%	0.00%

42. I am proud to tell people that I work for this organization.

80% Agreement

Response	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Don't Know/NA
Respondents	7	13	5	0	0	0
Percentage	28.00%	52.00%	20.00%	0.00%	0.00%	0.00%

42% Agreement

SCORE:	3.21
Std. Dev.:	1.18
Total Respondents:	24
BENCHMARKS	
Past Score:	3.47
Similar Mission:	4.00
Similar Size:	4.13
All Orgs:	3.88

80% Agreement

SCORE:	4.04
Std. Dev.:	0.79
Total Respondents:	25
BENCHMARKS	
Past Score:	None
Similar Mission:	None
Similar Size:	None
All Orgs:	None

46% Agreement

SCORE:	3.38
Std. Dev.:	1.10
Total Respondents:	24
BENCHMARKS	
Past Score:	3.58
Similar Mission:	3.81
Similar Size:	3.97
All Orgs:	3.71

80% Agreement

SCORE:	4.08
Std. Dev.:	0.70
Total Respondents:	25
BENCHMARKS	
Past Score:	4.21
Similar Mission:	4.07
Similar Size:	4.14
All Orgs:	3.97

REPLACEMENT/CAPITAL IMPROVEMENT PLAN

FY 2017-2019

REPLACEMENT/CAPITAL IMPROVEMENT PLAN FY 2017-2019

FY2017

<u>Proposed Maintenance Projects:</u>	<u>Estimated Cost</u>
Carpet replacement	\$22,307 ¹
 <u>Proposed Capital Improvements:</u>	
Electronic Document Management System ²	\$10,000
HVAC unit replacement with air duct returns ³	\$27,270 ⁴

Related new operating and maintenance costs (if any):

The installation of a new HVAC system will not result in any new material operating or maintenance costs and will reduce energy bills and maintenance costs. Ongoing maintenance costs will be the same as with our old HVAC systems: approximately \$600 a year for twice annual service including the cost of new filters.

The installation of new floor coverings will not result in any new operating or maintenance cost.

FY2018

<u>Proposed Maintenance Projects:</u>	<u>Estimated Cost</u>
None	
 <u>Proposed Capital Improvements:</u>	
Remodel Restrooms for ADA Compliance and Energy Efficiency ⁵	\$ 203,500

¹ The estimate was taking by averaging the middle bid from one vendor with the sole bid of the other and adding the moving costs. See Exhibit A for carpet roll bids and Exhibit B for the moving bid to break down and reinstall all the cubicles, electrical, and cabling.

² The Department continues to implement its Electronic Document Management System. This amount would allow the Department to hire a consultant to identify the next phase of the Electronic Document Management System and determine the best course of action to implement that phase.

³ The dropped ceiling of the building interior serves as the return plenum to the two primary five ton heat pumps. Installation of insulated air duct returns with zoned dampered controls would improve energy efficiency.

⁴ See Exhibit C.

⁵ The building's toilet partitions need to be replaced to be complaint with Title III of the American with Disabilities Act ("ADA") and due to rust. The current toilet partitions are not large enough for an individual with a disability to maneuver. Other ADA improvements to the building's restrooms include: insulating lavatory pipes under sinks to prevent burns, installing a raised toilet seat, installing a full length bathroom mirror, and repositioning the paper towel dispensers. Additionally, the sink fixtures should be replaced with modern, energy-efficient models, the toilets should be replaced with low-flow toilets, and the toilet water supply hoses are rusted and should be replaced to prevent a water leak.

Related new operating and maintenance costs (if any):

The installation of new ADA requirement restroom improvements will not result in any new material operating or maintenance costs. The installation of more energy-efficient faucets and toilets will reduce operating and maintenance costs.

FY2019

Proposed Maintenance Projects:

Estimated Cost

None

Proposed Capital Improvements:

Replace the Roof⁶

\$251,500

Related new operating and maintenance costs (if any):

The installation of new roof will not result in any new material operating or maintenance costs.

⁶ The Department's roofing is a low-slope with built-up roof. It is deteriorated and should be replaced with no reported leaks. The Department's current roof is out of warranty for workmanship even though it maintains a materials warranty; however, collecting on a defective materials warranty is a herculean task because so many issues can be blamed on workmanship. Additionally, flashing was not added to the roof in critical places when the roof was first installed.

The Texas Facilities Commission provided us the following roof options.

System	Bldg. Ht.	Slope	Unit Cost	Sq. Ft.	Construction Cost	Escalation to 2018	Soft Cost/Contingency	Total
Mod. Bitumin (Hot Asphalt/Heat Welded)	1 - 2 Story	Low ¼"/Ft.	\$30	4,200	\$126,000	\$139,700	\$111,800	\$251,500
Single Ply TPO	1 - 2 Story	Low ¼"/Ft.	\$30	4,200	\$126,000	\$139,700	\$111,800	\$251,500
Single Ply PVC	1 - 2 Story	Low ¼"/Ft.	\$30	4,200	\$126,000	\$139,700	\$111,800	\$251,500
Arch. Metal *	1 - 2 Story	Pitched 4 : 12 Min.	\$25 - \$30	4,200	\$105,000 to \$126,000	\$139,700	\$111,800	\$251,500

* Not a recommended solution by TFC's roofing consultant.

EXHIBIT A

Town Lake Proposal
FLOORING

704 S. Lamar
 Austin, TX 78704
 (512) 804-9700 (877) 856-3800 FAX

Proposal Date 4/12/2018
 Proposal Number 2084
 Contact Gray Schroeder

SUBMITTED TO:	PROJECT
CREDIT UNION DEPT STATE OF TEXAS ATTN: LINDA	CARPET FOR FACILITY PHILADELPHIA ROLL GOODS TX MAS #13-72020

We will furnish the listed materials and perform the labor (if applicable) required for installation. Floor filling and/or leveling, repairs, furniture moving, vertical transportation, and removal of existing flooring is not included in this proposal unless specifically noted below and could result in additional charges.

**FURNISH & INSTALL
 CARPET TILE & BASE**

CPT	QUALITY: PHILADELPHIA ZING ROLL GOODS COLOR: TBS			
	374 SQ/YDS @	\$8.94		\$3,343.68
<hr/>				
	LABOR FOR CARPET TILE INSTALLATION			
	374 SQ/YDS @	\$6.05		\$2,262.70
<hr/>				
	ADHESIVE FOR ROLL GOODS			
	3 BKTS @	\$45.00		\$135.00
<hr/>				
BASE	QUALITY: ROPPE 4 1/2" COVE BASE - TBS			
	720 LINF/FT @	\$1.75		\$1,260.00
<hr/>				
	DEMO OF EXISTING CARPET			\$1,600.00
<hr/>				
	MOVING OFFICE FURNITURE AND BOXES			\$850.00
<hr/>				
	MINOR PREP			\$450.00
<hr/>				
	AFTER HOURS WORK			\$1,250.00
<hr/>				

BID EXCLUSIONS:
 EXCESSIVE FLOOR PREP/LEVELING, SALES TAX & MOVING ANY ELECTRONICS

**** THIS BID DOES NOT INCLUDE ANY MODULAR FURNITURE MOVING ****

**** PLEASE ALLOW TWO WEEKENDS FOR COMPLETION OF JOB ****

 PROPOSAL TOTAL \$10,951.26

Submitted by Gray Schroeder

ACCEPTANCE OF PROPOSAL: All prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as billed, it is understood and agreed that this is work not provided for in any other agreement.

Accepted By: _____ Signature _____

Date _____ Title _____

EXHIBIT A



211 East Riverside Drive
Austin, TX 78707
612-416-4348 PH
612-444-6393 FAX

Christi Wade
cwade@rockford-texas.com

Proposal

Date: 18-Apr-16
Plan Date:
Time:
Length:
Page 1 of 1

	Customer	Project
COMPANY:	CREDIT UNION DEPARTME	BROADLOOM CARPET
ATTN:	LINDA CLEVEN	OPTION 1
FAX#:		

Quantity	U.O.M	Description	Amount
ON MOHAWK TXMAS CONTRACT #13-72050:			
395.00	SY	SIN 31-304 - BIGELOW SKETCH PAD CARPET @ \$12.93	\$5,107.35
395.00	SY	SIN 31-804 - DIRECT GLUE INSTALLATION @ \$5.49	\$2,188.55
10.00	EA	SIN 31-804 - NUBROADLOK ADHESIVE @ \$44.19	\$441.90
1.00	EA	SIN 31-804 - NUBROADLOCK SEAM SEALER @ \$73.49	\$73.49
720.00	LF	SIN 31-804 - INSTALL ROPPE 4.6" COVE BASE @ \$1.85	\$1,332.00
OPEN MARKET ITEMS:			
395.00	SY	DEMO EXISTING CUSHION-BACK CARPET @ \$3.50	\$1,382.50
4.00	EA	FLOOR PREP @ \$16.50	\$66.00
1.00	EA	FURNITURE MOVING/SYSTEMS BREAKDOWN&REBUIL	\$2,620.00
1.00	EA	AFTERHOURS CHARGE	\$2,000.00
			\$15,091.79

- * ORDERS MUST BE SENT THROUGH SMART BUY PROGRAM
- * TAX EXEMPT
- * WORK WILL BE PERFORMED AFTERHOURS
- * ELECTRICAL AND DATA DISCONNECT/RECONNECT BY OTHERS

NOTES

Rockford will furnish & deliver the above material for the listed price. Subject to credit approval.
Price includes freight.
Price excludes tax.
Unless specifically included in this proposal : price excludes all demolition, repair or take-up of existing flooring; excludes vacuuming, damp mopping, buffing, waxing and floor protection; excludes floor leveling or repair; excludes sealing of floor; cleaning or removal of oil, grease, solvents, paint, plaster or other foreign substances; excludes asbestos abatement/control; excludes any furniture movement.
Price includes no attic stock of material beyond installation coverage.
Price includes work only during regular hours and for a single phase job.
Excludes grinding and sanding due to use of concrete curing compounds.
Rockford requires moisture and bond testing prior to all material installations. Testing requires conditioned space 72 hours prior to test and 72 hours to complete testing.
Rockford will not install on substrates with moisture/alkalinity test failure.
Minor floor prep in price includes 1 bag per 125 sqyds - carpet; 1 bag per 500 sq - hard surfaces. Additional floor prep will be billed on a time and material basis.
Client is subject to payment for stored materials.
Rockford will not accept chargeback for cleaning or damage without the option to inspect the claim(s) or without the option to make arrangements for acceptable repairs at their expense.
Rockford is not responsible for any claims that might result from product delivery date changes beyond their control.
If a manufacturer requires a deposit to manufacture/ship certain items, client shall pay that amount.
This proposal is valid for (45) days. Use of this pricing implies acceptance of above conditions.
Full payment is due (30) days from receipt of invoice unless specified otherwise.

Signed: _____ Accepted By: _____ Date: _____
Christi Wade

Anticipated Installation Start Date: _____

EXHIBIT A



211 East Riverside Drive
Austin, TX 78767
512-416-4346 PH
512-444-5393 FAX

Christi Wade
cwade@rockfordtexas.com

Proposal

Date
18-Apr-16
Plan Date
Time
Length

	Customer	Project
COMPANY:	CREDIT UNION DEPARTME	BROADLOOM CARPET
ATTN:	LINDA CLEVEN	OPTION 2
FAX#:		

Page 1 of 1

Quantity	UOM	Description	Amount
ON MOHAWK TXMAS CONTRACT #13-72050:			
395.00	SY	SIN 31-304 - LEES FACULTY REMIX CARPET @ \$15.24	\$6,019.80
395.00	SY	SIN 31-604 - DIRECT GLUE INSTALLATION @ \$5.49	\$2,166.55
10.00	EA	SIN 31-604 - NUBROADLOK ADHESIVE @ \$44.19	\$441.90
1.00	EA	SIN 31-604 - NUBROADLOCK SEAM SEALER @ \$73.49	\$73.49
720.00	LF	SIN 31-604 - INSTALL ROPPE 4.5" COVE BASE @ \$1.85	\$1,332.00
OPEN MARKET ITEMS:			
395.00	SY	DEMO EXISTING CUSHION-BACK CARPET @ \$3.50	\$1,382.50
4.00	EA	FLOOR PREP @ \$16.50	\$66.00
1.00	EA	FURNITURE MOVING/SYSTEMS BREAKDOWN&REBUIL	\$2,520.00
1.00	EA	AFTERHOURS CHARGE	\$2,000.00
			\$16,004.24

- * ORDERS MUST BE SENT THROUGH SMART BUY PROGRAM
- * TAX EXEMPT
- * WORK WILL BE PERFORMED AFTERHOURS
- * ELECTRICAL AND DATA DISCONNECT/RECONNECT BY OTHERS

NOTES

Rockford will furnish & deliver the above material for the listed price. Subject to credit approval.
Price includes freight.
Price excludes tax.
Unless specifically included in this proposal: price excludes all demolition, repair or take-up of existing flooring; excludes vacuuming, damp mopping, buffing, waxing and floor protection; excludes floor leveling or repair; excludes sealing of floor; cleaning or removal of oil, grease, solvents, paint, plaster or other foreign substances; excludes asbestos abatement/control; excludes any furniture movement.
Price includes no attic stock of material beyond installation coverage.
Price includes work only during regular hours and for a single phase job.
Excludes grinding and sanding due to use of concrete curing compounds.
Rockford requires moisture and bond testing prior to all material installations. Testing requires conditioned space 72 hours prior to test and 72 hours to complete testing.
Rockford will not install on substrates with moisture/alkalinity test failure.
Minor floor prep in price includes 1 bag per 125 sqyds - carpet; 1 bag per 500 sq - hard surfaces. Additional floor prep will be billed on a time and material basis.
Client is subject to payment for stored materials.
Rockford will not accept chargeback for cleaning or damage without the option to inspect the claim(s) or without the option to make arrangements for acceptable repairs at their expense.
Rockford is not responsible for any claims that might result from product delivery date changes beyond their control.
If a manufacturer requires a deposit to manufacture/ship certain items, client shall pay that amount.
This proposal is valid for (45) days. Use of this pricing implies acceptance of above conditions.
Full payment is due (30) days from receipt of Invoice unless specified otherwise.

Signed: _____ Accepted By: _____ Date: _____
Christi Wade

Anticipated Installation Start Date: _____

EXHIBIT A



211 East Riverside Drive
Austin, TX 78767
512-416-4346 PH
512-444-5393 FAX

Christl Wade
cwade@rockford-texas.com

Proposal

Date: 18-Apr-18

Plan Date:

Time:

Entity:

Page 1 of 1

	Customer	Project
COMPANY:	CREDIT UNION DEPARTME	BROADLOOM CARPET
ATTN:	LINDA CLEVEN	OPTION 3
FAX#:		

Quantity	U.O.M.	Description	Amount
ON MOHAWK TXMAS CONTRACT #13-72050:			
395.00	SY	SIN 31-304 - LEES WORK IT 26CARPET @ \$18.12	\$7,157.40
395.00	8Y	SIN 31-604 - DIRECT GLUE INSTALLATION @ \$5.49	\$2,188.55
10.00	EA	SIN 31-604 - NUBROADLOK ADHESIVE @ \$44.19	\$441.90
1.00	EA	SIN 31-604 - NUBROADLOCK SEAM SEALER @ \$73.49	\$73.48
720.00	LF	SIN 31-604 - INSTALL ROPPE 4.5" COVE BASE @ \$1.85	\$1,332.00
OPEN MARKET ITEMS:			
395.00	8Y	DEMO EXISTING CUSHION-BACK CARPET @ \$3.50	\$1,382.50
4.00	EA	FLOOR PREP @ \$16.50	\$66.00
1.00	EA	FURNITURE MOVING/SYSTEMS BREAKDOWN&REBUIL	\$2,520.00
1.00	EA	AFTERHOURS CHARGE	\$2,000.00
			\$17,075.84

- * ORDERS MUST BE SENT THROUGH SMART BUY PROGRAM
- * TAX EXEMPT
- * WORK WILL BE PERFORMED AFTERHOURS
- * ELECTRICAL AND DATA DISCONNECT/RECONNECT BY OTHERS

NOTES

Rockford will furnish & deliver the above material for the listed price. Subject to credit approval.
Price includes freight.
Price excludes tax.
Unless specifically included in this proposal : price excludes all demolition, repair or take-up of existing flooring; excludes vacuuming, damp mopping, buffing, waxing and floor protection; excludes floor leveling or repair; excludes sealing of floor; cleaning or removal of oil, grease, solvents, paint, plaster or other foreign substances; excludes asbestos abatement/control; excludes any furniture movement.
Price includes no attic stock of material beyond installation coverage.
Price includes work only during regular hours and for a single phase job.
Excludes grinding and sanding due to use of concrete curing compounds.
Rockford requires moisture and bond testing prior to all material installations. Testing requires conditioned space 72 hours prior to test and 72 hours to complete testing.
Rockford will not install on substrates with moisture/alkalinity test failure.
Minor floor prep in price includes 1 bag per 125 sqds - carpet; 1 bag per 800 sq - hard surfaces. Additional floor prep will be billed on a time and material basis.
Client is subject to payment for stored materials.
Rockford will not accept chargeback for cleaning or damage without the option to inspect the claim(s) or without the option to make arrangements for acceptable repairs at their expense.
Rockford is not responsible for any claims that might result from product delivery date changes beyond their control.
If a manufacturer requires a deposit to manufacture/ship certain items, client shall pay that amount.
This proposal is valid for (45) days. Use of this pricing implies acceptance of above conditions.
Full payment is due (30) days from receipt of invoice unless specified otherwise.

Signed: Christl Wade Accepted By: _____ Date: _____
Anticipated Installation Start Date: _____

EXHIBIT B

QUOTE

Facilities Resource, Inc.
 9737 Great Hills Trail # 305
 Austin, TX 78759
 ph: 512.371.1232
 fx: 512.371.9155
 www.fr-texas.com



DATE: 4/18/2016

FRI PROJECT #: 16116

FRI PROJECT NAME: State of Texas - Credit Union Department

TXMAS CONTRACT NUMBER: 9 71 11K 010

ISSUE PURCHASE ORDER TO: Facilities Resource, Inc.
 9737 Great Hills Trail, Suite #305
 Austin, TX 78759

LOCATION: 914 E Anderson Lane
 Austin, TX 78752

CONTACT INFORMATION: Ms Linda Clevien

DESCRIPTION OF WORK: Facilities Resource, Inc. proposes to dismantle and relocate furniture prior to carpet replacement, FRI will relocate furniture back to it's original location post carpet replacement

DESCRIPTION	AMOUNT		
	LABOR	MATERIALS	TOTAL
Services Provided Under TXMAS Contract: 9 71 11K 010			
FRI will remove, relocate, and replace all free-standing office furniture. This includes desks, chairs, tables, files, bookcases, and sofas. All furniture will be stored in on-site conference room	\$3,095.00		\$3,095.00
FRI will dismantle, relocate and re-install all modular furniture. All modular furniture will be stored in on-site conference room	\$3,340.00		\$3,340.00
Services Provided on "Open Market"			
(140) Crate for 2 weeks rental	\$714.00		\$714.00
<u>Cabling</u> 4 Poles / 8 Stations Pull back to ceiling and re-run and terminate	\$760.00		\$760.00
<u>Electrical</u> 4 Poles disconnect / re-connect	\$950.00		\$950.00
SUB-TOTAL:			\$8,859.00
TAX:			N/A
GRAND TOTAL:			\$ 8,859.00

* Pricing is for work to be performed in two phases. Work will be performed prior to and after completion of carpet replacement and includes time to perform these services after-hours/weekends as necessary to complete. If all of the work involving moving the furniture can be performed during regular business hours, the cost can be reduced.

**Electrical and cabling service will be performed late afternoon on Friday for disconnect and early Monday morning for re-connect

EXCLUSIONS TO THIS QUOTE:

- This quote does not include any costs to provide design layout, planning or coordination of product and/or labor to facilitate or make changes to:
- Voice and data cabling, testing or terminations and any equipment related to.
 - Electrical connections, disconnections or evaluations of building supply
 - Relocation of, or evaluations to; fire control or warning devices and any equipment related to
 - Audio or Visual devices and any equipment related to
 - Lighting components, parts or supplies
 - HVAC supplies, returns, ducting or any parts related to.
 - Carpet cleaning or replacements before, during or post project.
 - Wall patching and/or painting before, during or post project.

SPECIAL PROVISIONS:

Any revisions made to this Quote which may require additional parts, time and/or services will cause this Quote to become null and void and a Work Change Order will be submitted

This quote reflects the cost to perform the scope of work during regular business hours; Monday to Friday / 8:00 AM to 5:00 PM. If after hours or weekend work is required, additional charges will apply.

Wherein product deliveries and labor at site are affected by stairs and no other means (elevator or mechanical lift) of moving products is available, an additional fee will be applied.

TERMS AND CONDITIONS

Payments are due in full, NET 15 upon completion (or per Phase).

Signature of Approval _____

Date _____/_____/_____

EXHIBIT C

Linda Clevlen

From: MacLean Dove <mac@climatesolutionsTX.com>
Sent: Monday, April 11, 2016 4:53 PM
To: Linda Clevlen
Subject: Climate Solutions - Budgetary number for RTU replacement
Attachments: Credit Union heat load.pdf

Linda,

Charlie and I sat down together last week and went over different options for replacing the units for your building. We believe the best option would be to replace both units on the roof with new rooftop units. Based on the heat load calculation we performed on the building, two 5 ton units can be used to replace the existing 5 ton units for sufficient cooling of the space. (Heat load calculation attached to this email) With the new 5 ton units we would install two new thermostats with remote sensors where we would average out the temperature for the space. We have pricing for two options, 14 SEER units and 16 SEER units. The SEER rating or "Seasonal Energy Efficiency Ratio" measures air conditioning cooling efficiency. A higher SEER rating means greater energy efficiency.

The budgetary number for removing existing 5 ton units and installing new 5 ton units on roof also includes reestablishing a disconnect that is up to code, installing condensate piping to roof drain per code, averaging thermostats and remote sensors, removing existing exposed duct from roof, and installing roof curb and tying duct into roof curbs to alleviate potential roof leaks.

Replace (2) 14 SEER 5 ton units - \$27,270.00 Price per 14 SEER unit - \$13,635.00

Replace (2) 16 SEER 5 ton units - \$31,870.00 Price per 16 SEER unit - \$15,935.00

Please let me know if you have any questions or if you need me to get you the numbers in the form of an official proposal from us.

Thank*)
(.) . . .)
(.) . . .) You!



Mrs. MacLean Dove

EXHIBIT C

Report Prepared By:

Climate Solutions

For:

Credit Union Commission
914 West Anderson Lane
Austin, Texas

Design Conditions: Austin; Latitude: 30; Time 4:00 PM

Indoor:
Summer temperature: 73
Winter temperature: 70
Relative humidity: 50

Outdoor:
Summer temperature: 98
Winter temperature: 28
Summer grains of moisture: 90
Daily temperature range: 22

Building Component	Sensible Gain (BTUH)	Latent Gain (BTUH)	Total Heat Gain (BTUH)	Total Heat Loss (BTUH)
Floor, 4,556 sq.ft.	0	0	0	9,185
N Wall 669 sq.ft.	636	0	636	2,164
Window 48 sq.ft.	1,493	0	1,493	1,250
Door 20 sq.ft.	762	0	762	521
Leakage Summer 18 cfm	495	367	862	0
Leakage Winter 34 cfm	0	0	0	1,571
E Wall 722 sq.ft.	1,445	0	1,445	2,336
Window 48 sq.ft.	1,889	0	1,889	1,250
S Wall 585 sq.ft.	791	0	791	1,892
Window 112 sq.ft.	4,982	0	4,982	2,916
Door 40 sq.ft.	2,302	0	2,302	1,042
Leakage Summer 100 cfm	2,760	2,040	4,790	0
Leakage Winter 170 cfm	0	0	0	7,854
W Wall 754 sq.ft.	792	0	792	2,438
Window 16 sq.ft.	551	0	551	417
Ceiling 4,556 sq.ft.	54,642	0	54,642	32,530
People/Vent 10 people	2,450	1,550	4,000	0
Ventilation 300 cfm	8,250	6,120	14,370	13,860
Lights 3,200 watts	13,120	0	13,120	0
Miscellaneous	15,570	230	15,800	0
Whole Building - All Components	112,900	10,307	123,207 (10.5 tons)	81,225

EXHIBIT C

Page 1

Commercial Heat Loss and Heat Gain Calculation

4/7/2016

Report Prepared By:

Climate Solutions

For:

Credit Union Commission
914 West Anderson Lane
Austin, Texas

Design Conditions: Austin; Latitude: 30; Time 4:00 PM

Indoor:

Summer temperature: 73
Winter temperature: 70
Relative humidity: 50

Outdoor:

Summer temperature: 98
Winter temperature: 28
Summer grains of moisture: 90
Daily temperature range: 22

Building Component	Sensible Gain (BTUH)	Latent Gain (BTUH)	Total Heat Gain (BTUH)	Total Heat Loss (BTUH)
Cellings	54,642	0	54,642	32,530
Miscellaneous	15,670	230	15,800	0
Ventilation	8,250	6,120	14,370	13,860
Lights	13,120	0	13,120	0
Windows	8,895	0	8,895	5,833
Door Leakage	3,245	2,407	5,652	8,425
People	2,460	1,550	4,000	0
Walls	3,864	0	3,864	5,829
Doors	3,064	0	3,064	1,563
Infiltration	0	0	0	0
Duct	0	0	0	0
Skylights	0	0	0	0
Partitions	0	0	0	0
Floors	0	0	0	9,185
Whole Building - All Components	112,800	10,307	123,207 (10.5 tons)	81,225

HVAC-Calc Commercial 4.0

by HVAC Computer Systems Ltd.

888 738-1101

Load calculations are estimates only, actual loads may vary due to weather and construction differences.

EXHIBIT C

Central TX Commercial A/C & Heating, Inc.

7909 Rosson Drive
Austin Texas 78736
License #: TACLA 002692C
GS-07F-0281X / TXMAS-11-58060

Shari Shivers
814 East Anderson Lane
Austin, Texas 78752
Phone: 512-832-9238
Email: shari.shivers@ctcair.com

(512) 288-0822 office
(512) 288-0941 fax
1-800-338-5429

April 25, 2018

Two RTUs replacement

Central TX Commercial A/C & Heating, Inc., is pleased to quote a price of Seventeen Thousand Nine Hundred and No/100 Dollars (\$17,900.00) to perform the following

RTU Replacement 180,000 Btu

1. Lockout/tagout electrical.
2. Disconnect electrical.
3. Disconnect RTU's duct work and remove.
4. Disconnect drains.
5. Crane off old RTUs.
6. Set new RTUs.
7. Install new Duct and canvas.
8. Connect electrical.
9. Connect drains.
10. Install new thermostats.
11. Setup thermostat
12. Startup RTU's and verify units are functioning with in factory specifications.

Note:

Dispose of old unit.
Quote includes permits and crane.
Services other than those listed above.
All work will be performed during normal working hours.

Thank you for giving us the opportunity to make a difference.

Thanks,

Israel Rodriguez

Chiller Rentals by CTCA

Service Manager

Email: Israel@ctcair.com

512-468-7639 (cell)

512-288-0822 (off)

512-288-0941 (fax)

<http://www.ctcair.com>

<http://www.facebook.com/rentalchillers>

Texas Department of Licensing and Regulation, License TACLA002692C

P.O. Box 12157 Austin, Texas 78711

800-803-9202 Fax: 512-463-9468

Accepted By _____



Credit Union Department
State of Texas

FY 2017 Annual Operating Plan & Budget

Approved by the Credit Union Commission
July __, 2016

FY 2017 Annual Operating Plan & Budget

INTRODUCTION

In accordance with Chapter 16 of the Finance Code, the Department has crafted the following *FY 2017 Annual Operating Plan and Budget*. This document aligns the goals and measures developed for the Department's *Strategic Plan for Fiscal Years 2017-2021* with the Department's proposed budget. It aims to improve the links between the Department's resource needs, effectiveness, and outcomes.

THE DEPARTMENT TODAY

The Department is a self-directed and semi-independent agency that is responsible for ensuring a safe and sound credit union system for all Texans. This is accomplished through the effective chartering, regulation, and supervision of Texas-chartered credit unions. The operations of the Department are funded primarily by semiannual assessments levied on credit unions. The Department receives no state monies from the General Revenue Fund.

As of December 31, 2015, the Department was responsible for regulating and supervising 185 credit unions. Based on the year-end call reports, Texas-chartered credit unions held \$34.8 billion in assets or approximately 38 percent of total aggregate credit union assets in Texas.

GOALS AND OUTCOMES

The Credit Union Commission has established four strategic goals to guide the operations of the Department and to contribute to the achievement of its mission and performance goals. The Commission's goals are:

1. to ensure a safe and sound state credit union industry;
2. to provide a flexible regulatory framework that enables credit unions to provide a full competitive array of financial services;
3. to safeguard the interest of credit union members; and
4. to develop a professional and motivated staff that provides quality service to the citizens of Texas and supports achievement of the Department's statutory mission.

The Department works to meet these goals by, among other things, detecting violations and potential problems or issues in the Texas credit union system and ensuring that the violations are addressed; crafting rules that strengthen corporate governance and operations; ensuring credit union members are treated fairly; and making sure that the Department's human capital strategies, information technology initiatives, and resources are appropriately aligned to achieve the Department's mission, goals, and outcomes.

FY 2017 Annual Operating Plan & Budget

Like other regulatory agencies, the Department has found it challenging to develop measures that accurately depict the outcomes of the agency's activities. In many instances, the effects of the agency's efforts can only be indirectly assessed. The Department intends to continue refining its work in this area as it gains more experience in integrating its budget and performance functions. As part of this effort, the Department will continue to assess alternatives for measuring outcomes that help the public gauge the Department's progress in achieving its mission, as well as assisting staff in meeting their objectives.

Strategic Goal 1: To Ensure a Safe and Sound Credit Union Industry

Strategic Objective 1.1: The Department anticipates, understands, addresses, and communicates risk to credit unions. The Department seeks to fulfill this objective by:

1. establishing the appropriate regulatory framework;
2. being a prudent steward of Department resources;
3. ensuring risk-based supervision is properly implemented and focused on material risks to the industry and individual credit unions;
4. identifying emerging risk areas related to industry and individual credit unions;
5. complying with the examination requirements of 7 TAC Section 97.105;
6. resolving problem credit unions in a timely fashion, effectively, and when possible, without loss to the share insurance provider; and
7. taking prompt and effective enforcement actions when warranted.

Strategic Objective 1.2: The Department cooperates with other regulatory authorities on common interests. The Department seeks to fulfill this objective by:

1. working effectively with the NCUA, private share insurance providers, and other state regulators to identify and address risks and emerging issues; and
2. implementing and developing new coordination and collaboration agreements with NCUA, private share insurance providers, and other applicable state regulators regarding supervisory activities performed in credit unions and information exchange.

Strategic Objective 1.3: Supervisory methods and analytical tools keep pace with industry changes and appropriately support the broader mission of the Department. The Department seeks to fulfill this objective by:

1. utilizing analytical tools and reports to effectively use the data collected from credit unions to foster informed decision making for supervisory operations and policy;
2. deploying supervisory technology solutions to enhance data quality and provide user-friendly examiner access to key credit union and industry information; and

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3. Providing transparency through the Department's reporting.

Key Performance Measures

- Percentage of credit unions receiving regular examination
 - Target for FY 2017: **87.5%**
- Percentage of applications approved or denied within 60 days
 - Target for FY 2017: **100%**
- Number of state-chartered credit unions
- Number of regular examinations performed
- Percentage of credit unions with composite CAMEL ratings of 1 or 2
- Percentage of assets held in credit unions with CAMEL ratings of 1 or 2

Internal Measures

- Number of follow-up contacts made
- Number of enforcement actions issued
- Percentage of credit unions that are "Well Capitalized" as defined by federal statute
- Percentage of reports mailed to credit unions within 20 days
 - Target for FY 2017: **98%**
- Percentage of total available work time utilized to conduct both regular and remedial examination work.
 - Target for FY 2017: **65%**

Strategic Goal 2: To Provide a Flexible Legal and Regulatory Framework that Enables Credit Unions to Provide a Competitive Array of Financial Services

Strategic Objective 2.1: Each Commission rule is current, clearly written, and necessary for an effective supervisory process. The Department seeks to fulfill this objective by:

1. drafting, amending, and implementing rules to fulfill Legislative directives and to ensure relevance to current conditions;
2. conducting the mandatory rule review in accordance with Commission's approved plan; and
3. implementing rulemaking through successful collaboration and consultation with interested parties.

Strategic Objective 2.2: The Department supports credit union efforts to remain competitive, consistent with safety and soundness. The Department seeks to fulfill this objective by:

1. supporting the continued recognition of the attributes of the state credit union charter through appropriate opinions and rules;
2. developing and modernizing attributes of the credit union charter and the role and status of the industry;

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3. enhancing communication with NCUA and other state regulators to facilitate better coordination on issues affecting credit unions; and
4. communicating attributes of the state charter within and outside the Department.

Strategic Objective 2.3: Application procedures are efficient and consistent with safety and soundness. The Department seeks to fulfill this objective by:

1. providing a standardized application package;
2. establishing policies and procedures that provide clear and comprehensive guidance;
3. implementing and maintaining processes for prompt screening of applications; and
4. enhancing existing technology solutions that support effective application operations.

Key Performance Measures

- Number of applications processed
- Percentage of rule changes provided to credit unions within 60 days after adoption
 - Target FY 2017: **100%**

Internal Measures

- Number of new rules adopted
- Number of rules amended
- Number of rules re-adopted without change
- Number of applications processed
- Number of requests for interpretations/opinions of Act and Rules
- Number of contested cases referred to SOAH
- Number of Public Information Act requests processed
- Number of public forums in which Department participates
- Total Assets in state-chartered credit unions
- Percentage increase in total aggregate credit union assets
- Percentage of interpretations/opinions issued within 30 days
 - Target FY 2017: **100%**

Strategic Goal 3: Safeguard the Interest of Credit Union Members

Strategic Objective 3.1: All credit union members have reasonable access to credit union services and are treated fairly and lawfully. The Department seeks to fulfill this objective by:

1. reinforcing the importance of fair and honest treatment of credit union members through appropriate supervisory and enforcement action;

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2. expanding the agency's role in resolving and/or mediating member complaints handled by the Department;
3. strengthening role in addressing member privacy, information security, and identity theft; and
4. enhancing the Department's consumer compliance examination program.

Strategic Objective 3.2: Credit unions are involved in providing financial services in underserved communities within this State. The Department seeks to fulfill this objective by:

1. supporting the efforts of credit unions to expand their fields of membership to include underserved and low income communities;
2. facilitating the process for credit unions to obtain a low-income designation from NCUA; and
3. participating in financial literacy efforts by the industry and other agencies.

Key Performance Measure

- Percentage of credit unions providing services to low income or underserved populations

Internal Measures

- Number of complaints processed
- Percentage of complaints responded to within 30 days
 - Target FY 2017: **95%**

Strategic Goal 4: Develop a Professional and Motivated Staff that Provides Quality Service and Supports Achievement of the Department's Statutory Mission.

Strategic Objective 4.1: The Department maintains a competent, highly motivated, and diverse workforce in a fair and inclusive work environment. The Department seeks to fulfill this objective by:

1. maintaining a comprehensive Equal Employment and Workforce Diversity Plan;
2. executing an aggressive recruiting and comprehensive training strategy for new entry-level examiners;
3. developing proactive initiatives focused on the retention of employees, including mentoring, employee feedback, incentives, and recognition programs;
4. creating a leadership development program to support and enhance management succession; and

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5. implementing an external hiring strategy to augment specialized skills to enhance the Department's supervision of complex credit unions.

Strategic Objective 4.2: The Department is an efficient, effective, and ethical organization. The Department seeks to fulfill this objective by:

1. ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework;
2. ensuring compliance with the rules, policies and procedures for ethical conduct by its employees;
3. ensuring reliable, secure, modern information technology systems are in place in support of an environment that meets the Department's mission, goals, and objectives; and
4. leveraging technology, with particular focus on information management initiatives, such as records and knowledge management.

Strategic Objective 4.3: The Department's resource decisions and operations reflect sound financial, security, and risk management principles. The Department seeks to fulfill this objective by:

1. implementing security controls to mitigate risk and to protect confidential information;
2. improving contingency planning for business continuity, including information technology recovery, compliance with Homeland Security requirements, and crisis management strategies; and
3. achieving reliable, accurate and timely financial resources management information.

Internal Measures

- Annual examiner turnover rate
- Average regulated assets per examiner (millions)
- Annual staff turnover rate
- Number of days of formal training attended by staff
- Number of contracts awarded to HUB vendors
- Percentage of contracts awarded to HUB vendors
- Percentage of credit unions indicating quality service annually
 - Target FY 2017: **90%**
- Staffing level
 - Target FY 2017: **95%**
- Number of jobs fairs attended
 - Target FY 2017: **4**
- Turnover ratio (excluding retirements)
 - Target FY 2017: **Less than 15%**

DEPARTMENT BUDGET – FY 2017		
REVENUE:		
Operating Fees		\$3,935,394 ¹
Examination Fees		
Application Fees		
Penalties		
Refund/Reimbursement of Expenditures		
Other		
TOTAL REVENUE		\$3,935,394
EXPENDITURES:		
Personnel Expenses		
Salaries and Wages	\$2,413,819	
Payroll Related Costs	762,997	
Total Personnel Expenses		\$3,176,816
Travel Expenses		
In State	\$407,921	
Out-of-State	10,000	
Commission	11,000	
Total Travel Expenses		\$428,921
Other Operating Expenses		
Professional Services/Fees	\$15,800	
Materials and Supplies	36,518	
Communications/Utilities	38,320	
Repairs/Maintenance	101,247	
Rentals and Leases	5,520	
Printing and Reproduction	2,855	
Other Expenditures	129,397	
Total Other Operating Expenses		\$329,657
TOTAL EXPENDITURES		\$3,935,394
CONTINGENCY RESERVE		
		\$845,000
FULL-TIME-EQUIVALENT POSITIONS (FTEs)		
		29.5

¹ Any funds in excess of the prescribed Contingency Fund Reserve aggregate limit as of August 31, 2016, shall be used to reduce the operating fees for Texas credit unions during the fiscal year.

CUMULATIVE RESOURCES

Fiscal Year	2011	2012	2013	2014	2015	2016
Authorized FTE	24.5	24.5	25	25	27.5	28.5
Actual FTE	22.5	23.5	23.5	24.3	25.0	TBD
Budgeted Dollars	\$2,656,716	\$2,814,637	\$2,969,435	\$3,024,386	\$3,503,250	\$3,700,917
Actual Dollars Spent	\$2,520,819	\$2,572,236	\$2,823,222	\$2,984,998	\$3,066,134	TBD

NEW BUSINESS

(b) Next Commission Meeting – The next regular meeting of the Commission has been tentatively scheduled for November 4, 2016.

G

EXECUTIVE SESSION

(closed to public)

G. The Credit Union Commission may go into Executive Session [close its meeting to the public] on any agenda item if appropriate and authorized by 551.074 of the Government Code.

Adjournment

CREDIT UNION DEPARTMENT

INDUSTRY STATUS

AND

DEPARTMENTAL OPERATION

AFFIRMATIVE ACTION/EEO QUARTERLY REPORT
3rd Quarter - FISCAL YEAR 2016

During this fiscal year the Department is authorized to have 28.5 Employees.

	White		Black		Hispanic		Asian		Total
	Male	Female	Male	Female	Male	Female	Male	Female	
No. of Employees on 2nd quarter	10	5	1	5	0	3	2	0	26
Resignations (retirees)	1	0	0	0	0	0	0	0	1
New Hires	1	0	0	0	0	0	0	0	1
No. of Employees on 3rd quarter	10	5	1	5	0	3	2	0	26
Resignations (retirees)	0	0	0	0	0	0	0	0	0
New Hires --	1	0	0	0	0	1	0	0	2
Grand Total of Employees	11	5	1	5	0	4	2	0	28
Promotions - 3rd Quarter				1					1

Percent Male 50.00%
 Percent Female 50.00%

Salary Breakdown

	<u>2nd quarter</u>	<u>3rd quarter</u>	<u>Average Tenure</u>	
Average of Salaries	\$ 71,107	\$ 74,339	117.9	months
Average Salaries - White	\$ 81,756	\$ 82,796	119.2	months
Male	11 \$ 91,934	\$ 92,522	137.6	months
Female	5 \$ 61,400	\$ 61,400	78.8	months
Average Salaries - Black	\$ 68,081	\$ 68,081	128.0	months
Male	1 \$ 67,000	\$ 67,000	25.8	months
Female	5 \$ 68,297	\$ 68,297	148.5	months
Average Salaries - Hispanic	\$ 50,332	\$ 52,666	139.7	months
Male	0 \$ -	\$ -	0.0	months
Female	4 \$ 50,332	\$ 52,666	139.7	months
Average Salaries - Asian	\$ 67,029	\$ 68,800	101.4	months
Male	2 \$ 67,029	\$ 68,800	101.4	months
Female	0 \$ -	\$ -	0.0	months
	28			

Exmr. Experience - 3rd quarter

Less than 1 year	6	Average Salary	\$ 46,667
1 - 2 years	5	Average Salary	\$ 53,808
2 - 5 years	0	Average Salary	-
5 - 10 years	1	Average Salary	\$ 82,797
Over 10 years	6	Average Salary	\$ 96,603
Total	18	Average Salary	\$ 72,488

Credit Union Department

Executive Summary

As of 02/29/16

*Information from call report cycle

ACTIVITY	YTD 2014	YTD 2015	2016 FISCAL YEAR				YTD
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
MOVEMENT PROFILE							
Number of CUs	188	185	186	184			
Total Assets (Millions)	*31,715	*33,540	*34,203	*34,852			
APPLICATIONS (Received)							
Charters	0	0	0	0			0
Foreign Branches	0	0	0	0			0
Conversions	0	2	1	1			2
Mergers	3	9	1	1			2
Bylaws	64	60	23	5			28
Articles of Incorporation	5	2	0	1			1
Total	72	73	25	8	0	0	33
EXAMINATION ACTIVITIES							
Regular	68	81	20	28			48
Joint	95	75	20	8			28
Remedial	44	35	11	6			17
Total	207	191	51	42	0	0	93
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	5	5	5	3			
LUAs	2	0	0	0			
Cease & Desist Orders	0	2	3	2			
Dividend Restrictions	0	0	0	0			
Conservatorships	1	1	1	1			
Liquidations	1	2	2	2			
Total	9	10	11	8	0	0	
PERSONNEL STAFFING							
Field Examiners	17	14	18	17			
Total Personnel	26	24	28	26			
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	3,024	3,329	863	866	0	0	1,729
Actual Expenditures	3,009	3,066	805	844	0	0	1,649
Gifts and Bequests	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Actual Revenue	2,851	3,452	1,975	1	0	0	1,976

Credit Union Department
Application Activities - Detail

ACTIVITY	4th Qtr 2014	4th Qtr 2015	2016 FISCAL YEAR					
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr		
CHARTERS								
Pending at Beginning of Period	0	0	0	0				
Add: New Applications Filed	0	0	0	0				
Less: Approved	0	0	0	0				
Denied/Withdrawn	0	0	0	0				
Pending at End of Period	0	0	0	0	#####	#####		
FOREIGN BRANCH OFFICES								
Pending at Beginning of Period	0	0	0	0				
Add: New Applications Filed	0	0	0	0				
Less: Approved	0	0	0	0				
Denied/Withdrawn	0	0	0	0				
Pending at End of Period	0	0	0	0	#####	#####		
CONVERSIONS								
Pending at Beginning of Period	0	1	0	1				
Add: Applications Filed	0	0	1	1				
Less: Approved	0	1	0	1				
Denied/Withdrawn	0	0	0	0				
Pending at End of Period	0	0	1	1	#####	#####		
MERGERS								
Pending at Beginning of Period	2	3	2	2				
Add: Applications Filed	1	1	1	1				
Less: Approved	2	2		0				
Denied/Withdrawn	1	0	1	0				
Pending at End of Period	0	2	2	3	#####	#####		
BYLAWS								
Pending at Beginning of Period	1	4	10	11				
Add: Applications Filed	15	17	23	5				
Less: Approved	11	11	21	11				
Denied/Withdrawn	0	0	1	0				
Pending at End of Period	5	10	11	5	#####	#####		
ARTICLES OF INCORPORATION								
Pending at Beginning of Period	0	1	0	0				
Add: Applications Filed	1	0	0	0				
Less: Approved	1	1	0	0				
Denied/Withdrawn	0	0	0	0				
Pending at End of Period	0	0	0	0	#####	#####		

Credit Union Department
Movement Profile - Condition Summary

CAMEL RATING	4th Qtr 2014	4th Qtr 2015	2016 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
1	26	27	29	29			
2	133	126	125	126			
3	28	28	28	26			
4	1	4	4	3			
5	0	0	0	0			
Total	188	185	186	184	#VALUE!	#VALUE!	

Texas Credit Union Department
Enforcement Actions - Detail

TYPE OF ACTION	In Force 8/31/2014	Issued	Activity Terminated	In Force 8/31/2015	Issued	Activity Terminated	In Force 2/29/2016
Determination Letters	5	5	5	5	0	2	3
LUAs	2	0	2	0	0	0	0
Cease & Desist Orders	0	3	1	2	0	0	2
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	1	0	0	1	0	0	1
Liquidations	1	1	0	2	0	0	2
Total	9	9	8	10	0	2	8

Texas Credit Union Department
Examination Activities
Analysis of Current Year

TYPE OF EXAM	Budgeted Number	Actual Number	% Budget	% of Total	% Mailed Within 20 Days
Regular	44	28	64%	26%	28%
Joint	42	8	19%	15%	8%
Remedial	20	6	30%	9%	6%
Total	106	42	40%	20%	100%

Credit Union Department
Movement Profile - Consumer Complaints

CONSUMER COMPLAINTS	YTD 2014	YTD 2015	2016 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
Received	224	264	46	76			122
Closed	230	253	55	71			126
Avg. Days to Process	14	13	14	15			29
% Resolved in 30 Days	98%	98%	100%	98.6%			199%

Texas Credit Union Department
Consumer Complaint - Detail

TYPES OF COMPLAINTS	YTD 2014	YTD 2015	2016 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
LOAN ISSUES							
Collections/Loans	12	21	7	5			12
Procedure Irregularity	34	21	2	8			10
Denial	0	0					0
Cross Collateralization	0	3	3				3
Credit Report Issues	21	16	7	5			12
Collateral Protection Insurance	5	8		1			1
ACCOUNT ISSUES							
NSF/Overdraft	0	0					0
Electronic Funds Transfer	7	15	1	1			2
Holds on Checks	1	6		3			3
Posting Order	7	3	1				1
Fraud/Unauthorized	15	22	4	9			13
Fees	29	33	5	5			10
Billing Disputes	5	5	2	1			3
Other	21	20	3	13			16
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	35	26	4	8			12
Account Closed/Frozen	8	18	3	7			10
Customer Service	22	32	13	3			16
Deceptive Advertisement	3	1		1			1
Vehicle Title	4	2		1			1
Website Issues	1	1					0
TOTAL	230	253	55	71	0	0	126

Credit Union Department
Merger/Conversion Finalized

ACTIVITY	YTD 2014	YTD 2015	2016 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MERGERS							
Number:							
State-to-State	1	2		1			1
Federal-to-State	5	3					0
State-to-Federal	2	0					0
Total	8	5	0	1	0	0	1
Assets:							
State-to-State	20,338,698	49,143,057	-	204,775,607			
Federal-to-State	99,044,519	20,820,734	-			-	-
State-to-Federal	5,839,695	-	-	-			-
Total	125,222,912	69,963,791	-	204,775,607	-	-	-
CONVERSIONS							
Number:							
Federal-to-State	1	1	1				1
State-to-Federal	0	0		1			
State-to-Mutual Bank	0	0					
Assets:							
Federal-to-State	44,814,185	331,371,403	68,778,296	93,031,662	-		161,809,958
State-to-Federal	-						
State-to-Mutual Bank							
Total	44,814,185	331,371,403	68,778,296	93,031,662	-	-	161,809,958

Credit Union Department
Quarter Assessment of HUB Related Activities
February 29, 2016

PROCUREMENT CATEGORY	GOAL	QTR	YTD
		PERFORMANCE	PERFORMANCE
Heavy Construction	11.2%	*	*
Building Construction	21.1%	*	*
Special Trade Construction	32.9%	0%	0%
Professional Services	23.7%	0%	0%
Other Services	26.0%	83%	76%
Commodities	21.1%	42%	48%

* This goal is generally not applicable to the Department

Total Expenditure During this Quarter							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services		36,800	192		6,623	8,840	43,615
Commodities	78	2,500			572	4,395	3,150
Total	\$78	\$39,300	192	0	\$7,194	\$13,235	\$46,764

Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized this Quarter							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services		1	1		1	10	3
Commodities	1	1			1	10	3

Credit Union Department
Year to Date Assessment of HUB Related Activities
February 29, 2016

Total Expenditure YTD							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	3,051	48,800	192		13,245	20,416	65,288
Commodities	247	2,963			5,416	9,386	8,626
Total	\$3,298	\$51,763	192	0	\$18,661	\$29,802	\$73,914

Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized YTD							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	1	2	1		2	21	6
Commodities	2	2			4	17	8

Credit Union Department
Web Site Statistics
Report Range: 12/01/15 thru 02/29/16

	Number
Total Visits:	
Number of Visits	6,481
Visitors	3,555
Page Views	17,840
Number of Repeat Visitors	3,279
Average Pages per Visit	2.75
Average Visit Duration	3:46
Most Requested Pages:	
Home Page	6,088
Employment	1,065
Job Postings	982
Texas Rules for Credit Unions	738
Contact Us	391
Most Downloaded Files:	No statistics available at this time

Stakeholder Input

In accordance with Section 2114.002 of the Texas Government Code, the Department solicits input regarding certain activities performed by the agency through three separate post surveys. The goal of these surveys is to help target areas for improvement, as well as to identify what parts of the existing processes are working well.

A credit union or a complainant is sent an invitation by email to participate in an online survey after the completion of an examination, a decision on an application, or the formal closing of a complaint. Completed surveys are tabulated and the current fiscal year results are provided in the following tables. This methodology of data collection does not follow random sampling guidelines; rather it allows 100% of credit unions and complainants the opportunity to provide feedback. The Department does not require a deadline for a response and the name of the respondent is anonymous unless the respondent provides contact information. The most recent survey period covers September 2015 to May 2016.

Monthly Survey Results
Examinations
January, 2016 thru May, 2016

Reflects summary responses from 16 surveys received or 4 % of the 40 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. The lead-time was sufficient to gather the information requested prior to the on-site examination.	14	1			1	
Q 2. The pre-examination requests were reasonable in scope.	13	1	2			
Q 3. Materials requested in the pre-examination were used during the examination.	12	1	1	1		
Q 4. The pre-examination request made the examination run more efficiently.	14	3	1		1	
Q 5. The examiners were knowledgeable about your credit union.	10	3	1	1	1	
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	12	1	1	1	1	
Q 7. The examiners were responsive to your questions and concerns.	13	1	1		1	
Q 8. The examiners communicated effectively with the credit union throughout the examination.	14	1			1	
Q 9. The examiners treated you professionally.	15		1			
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	14	1	1			
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	14	1			1	
Q 12. Management was given the opportunity to react to the examination findings.	13	1	1		1	
Q 13. The examination was completed within a reasonable timeframe.	13	1	2			
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	11	3			1	1
Q 15. The report was easy to understand.	12	2			1	1
Q 16. The report accurately portrayed your credit union's practices and condition.	10	3			2	1
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	13		1		1	1
Q 18. The report contained useful recommendations for improving safety and soundness practices.	7	4	3		1	1

Examinations (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 19. The examination findings will assist you in enhancing your safety and soundness practices.	9	2	2	1	1	1
Q 20. The examination was conducted in a fair and objective manner.	13		1		1	1

Applications

Reflects summary responses from 2 surveys received or 15 % of the 13 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. Department staff provided timely and accurate feedback/answers.	1	1				
Q 2. Department staff communicated with me in a courteous and professional manner.	2					
Q 3. The application process was efficient.	1	1				
Q 4. The Department's requests for information were reasonable.	1	1				
Q 5. The Department's website was helpful in completing my application.		2				

Complaints

Reflects summary responses from 9 surveys received or 12 % of the 75 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. It was relatively easy to file a complaint with the Department.	3	4		1	1	
Q 2. Department staff communicated with me in a courteous and professional manner.	5		3		1	
Q 3. I believe Department staff understood the basis of my complaint.		1	3	3	2	

Complaints (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 4. The response provided by the Department addressed the important aspects of my complaint.	3	2			4	
Q 5. The explanation give was fair considering applicable laws.	2	2	1	1	3	
Q 6. The Department website was helpful in the complaint process.	3	1	2	2	1	