



CREDIT UNION COMMISSION MEETING

*Credit Union Department Building
914 East Anderson Lane
Austin, Texas*

**November 4, 2016
9:00 a.m.**

AGENDA

Public comment on any agenda item or issue under the jurisdiction of the Credit Union Commission is allowed. Unless authorized by a majority vote of the meeting quorum, the comments of any persons wishing to address the Commission will be limited to no more than ten (10) minutes.

<u>TAB</u>		<u>PAGE</u>
A.	Call to Order (9:00 a.m.) – Chair Manny Cavazos General Public Comment	4
B.	Receive and Approve Minutes of the July 8, 2016 Credit Union Commission Meeting	7
C.	Consideration of Report and Recommendations of the Commissioner Evaluation Committee – Sherri Merket, Commissioner Evaluation Committee Chair, will Discuss the Results of the Committee’s Public Meeting on November 3, 2016 related to the Commissioner’s FY 2016 Performance Review	22
D.	Review of Pending and Ongoing Matters Before the Commission	
	a. Discussion, Consideration and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC Section 91.709 Concerning Member Business Loans	28
	b. Discussion, Consideration and Possible Vote to Take Action on the Adoption of the Amendments to 7 TAC, Part 8, Chapter 153, Sections 153.5 (Three Percent Fee Limitation), 153.8 Security of Equity Loan), 153.13 (Preclosing Disclosure), 153.14 (One Year Prohibition), and 153.17 (Authorized Lenders), Resulting from Rule Review	83
	c. Discussion and Consideration of the Department’s FY 2016 Financial Performance and the FY 2017 Budget	90
	d. Discussion of the Status of the State Credit Union System	93
E.	Review of New Matters to come Before the Commission	
	a. Discussion, Consideration, and Possible Vote to Take Action on the Readoption of the Department’s Equal Employment and Workforce Diversity Plan	98
	b. Discussion and Consideration of the Findings of the Audit being conducted by the State Auditor’s Office	107

Adjournment

Note: The Credit Union Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

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

CREDIT UNION COMMISSION MEMBERS

- *Manuel “Manny” Cavazos, Chair*
- *Allyson “Missy” Morrow, Vice-Chair*
- *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*



CREDIT UNION COMMISSION

FUTURE MEETING DATES

- Friday, March 10, 2017
 - Friday, July 14, 2017
 - Friday, November 3, 2017
-

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

If any Commission Member has a conflict 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 July 8, 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 July 8, 2016 be approved as presented.

**CREDIT UNION COMMISSION
MEETING MINUTES
JULY 8, 2016**

A. CALL TO ORDER - ASCERTAIN A QUORUM – Vice Chair Allyson “Missy” Morrow called the meeting to order at 9:02 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code. Other members present included Beckie Stockstill Cobb, Yusuf Farran, Steven “Steve” Gilman, Sherri Merket, Kay Stewart, Gary Tuma, and Vik Vad. Commission Chairman Manuel “Manny” Cavazos was absent. Assistant Attorney General Melissa Juarez was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner, Robert E. Etheridge, Deputy Commissioner and Shari Shivers, Assistant Commissioner and General Counsel. Vice Chair Morrow appointed Isabel Velasquez as Recording Secretary. The Vice Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**June 23, 2016, TRD#2016004289**).

❖ **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Vice Chair Morrow 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**
– Vice Chair Morrow inquired if there were any requests or motions to excuse an absence. Mr. Vad moved to excuse Commission Chairman Manuel “Manny” Cavazos from the Commission meeting on July 8, 2016. Mr. Tuma seconded the motion, and the motion was unanimously adopted.

❖ **B. RECEIVE MINUTES OF PREVIOUS MEETING (March 4, 2016).** The Vice Chair referred the members to the draft minutes contained in the agenda packet. Mr. Gilman moved for approval of the minutes of March 4, 2016 as presented. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

C. COMMUNICATIONS

The Vice Chair referred members to the correspondence contained in the agenda packet. Commissioner Feeney noted that the state auditors will continue work onsite until the first part in August and we should have a final report by the end of October. Mr. Feeney also called attention to the correspondence concerning Texans Credit Union being released from federal conservatorship. He also pointed out that the success in reaching this milestone was in large part due to the support and dedication of NCUA Regional Director Keith Morton, the agent for the conservator.

D. COMMITTEE REPORTS

Rules Advisory Committee -- Mr. Vad, Rules Committee Chairman, reported on the Committee's public meeting held on July 7, 2016. He explained that the Committee had seven recommendations for consideration by the Commission.

(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. Mr. Vad noted 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.

(2) 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. Mr. Vad explained that the Commission approved at its March meeting for publication and comment the proposed amendments to 7 TAC Section 97.200. No comments were received in regards to the proposed amendments.

(3) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Subchapter P, Section 91.7000 Concerning Certificates of Indebtedness and Subchapter Q, Section 91.8000 Concerning Discovery of Confidential Information. Mr. Vad noted that in accordance with the Commission's Rule Review Plan, the committee reviewed 7 TAC Subchapter P, Section 91.7000 and Subchapter Q, Section 91.8000. No comments were received regarding the review.

(4) 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). Mr. Vad reported that the notice of the review was published in the *Texas Register* and the Department received one comment in response to that notice. After the Committee's review, there are certain revisions that are appropriate and necessary in Chapter 153 and those proposed amendments will be handled in the next agenda item.

(5) 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. Mr. Vad reported that the Committee considered some proposed amendments to 7 TAC, Part 8, Chapter 153. The proposed amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and other technical corrections.

(6) Discussion of and Possible Vote to Approve the Department's 2017-2020 Rule Review Plan as Required by Section 2001.039, Government Code. Mr. Vad reported that each state agency is required to develop a 4 year plan under which the agency will review all of its existing rules to comply with the provisions of Section 2001.039 of the Government Code.

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

(7) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Proposal and Publication for Comment to 7 TAC Section 91.709 Concerning Member Business Loans. And finally, Mr. Vad pointed out that the committee had no formal recommendations on some potential amendments to 7 TAC Section 91.709, however, the Committee encouraged the Commission to take up and consider for publication and comment a newly revised proposal developed by staff. He asked the Commissioner to explain the proposal.

Commissioner Feeney reported that NCUA has recently adopted a final rule intended to modernize its member business loan 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. He noted that NCUA's final rule amends the regulatory requirements pertaining to credit union commercial lending activities by replacing the current "prescriptive requirements" with a broad "principles-based" regulatory approach. Mr. Feeney noted that states, such as Texas, which currently have exemptions from the existing 12 C.F.R. Part 723, were "grandfathered" in the final rule. As a result, without action by the Commission, 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. He explained that the proposal before the Commission would 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. Mr. Feeney explained that 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. He pointed out that 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, he indicated that the proposal contains prohibitions on certain types of commercial

loans and contains an aggregate member business loan limits. And finally, he noted that 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.

After review and discussion, Mrs. Merket moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.709 as recommended by staff. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(b) The Commissioner Evaluation Committee – Mrs. Merket, Commissioner Evaluation Committee Chair, reported on the Committee's public meeting held on July 7, 2016. She explained that the Committee had one recommendation for consideration by the Commission and that she would briefly highlight the procedures to be utilized in evaluating the Commissioner's FY 2016 performance.

1) 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. Mrs. Merket reported that it was the Committee determination that the 2016 Performance Objectives were still appropriate, with the exception of two objectives. She noted the Committee felt that the Production Objective related to the mailing of examination reports should be modified to allow the Department "21" days to complete and mail the reports instead of the current "20" days. She also indicated that it was suggested that the Administration Objective related to the minimum number of job fairs the Department attends should be reduced from "4" to "2".

Mrs. Merket moved, on behalf of the Commissioner Evaluation Committee, that the Commission adopt the existing performance objectives with the noted amendments for FY 2017. Coming on a motion of a standing committee, a second was not needed and the motion passed unanimously.

2) Discussion and Consideration of the Procedures to be Utilized in the Commissioner's FY 2016 Performance Review. Mrs. Merket briefly highlighted the procedures to be used as part of the Commissioner's performance review. No formal action was taken by the Commission.

E. UNFINISHED BUSINESS

(a) Discussion and Consideration of the Department's FY 2016 Financial Performance. Commissioner Feeney reported that during the first nine months of FY 2016 operating income totaled \$3,261,423, which was \$6,896 more than 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 the fiscal year. In addition, he indicated that during the same nine month period \$2,520,000 was spent operating the Department, which is \$173,000 less than the amount budgeted for the period. No formal action was taken by the Commission.

(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 the business environment has become a little more difficult for Texas credit unions amid weak oil prices, challenging institutions that have heightened energy sector exposure. He

indicated that, in general, revenue growth continues to be held back by narrow interest margins and many institutions are reaching for yield. Mr. Feeney explained that credit risk and interest rate risk are matters of ongoing supervisory attention.

After a brief discussion of some of the key financial trends, no formal action was taken by the Commission.

(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. Mr. Feeney reported that at the last meeting, the Commission tabled discussion related to the Commission's Second Amendment Weapons Policy. He encouraged the Commission to take the motion off the table and consider amending the policy to be consistent with the weapons policy that is being used by the Office of the Governor.

After a brief discussion, Mrs. Stewart moved that the Commission approve the proposed changes to its Second Amendment Weapons Policy as recommended by staff. Mr. Farran seconded the motion and the motion was unanimously adopted.

F. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Take Action to Approve Both the Department's Operating Plan and Budget for Fiscal Year 2017. Commissioner Feeney reported that Section 16.003 of the Finance Code gives the Commission the exclusive responsibility for approving the Department's budget. He noted that in accordance with the budget policies and guidelines

approved at the Commission's last meeting, staff was presenting for consideration a proposed FY 2017 Current Service Level budget of \$3,645,281. In addition, Mr. Feeney explained that in accordance with the FY 2017-2021 Strategic Plan, staff also encourages consideration of three new initiatives and a replacement/capital improvement plan. He provided a brief explanation of the exceptional items:

- **Initiative #1 -- Equity adjustment for FEI and FEII (\$69,157).** Mr. Feeney explained that the Department's compensation program must be externally competitive in order to attract and reward qualified individuals. He noted that it was important for the Department to address the current inequities with the salaries being paid by the Department to its Financial Examiner I and II with those being paid by other state agencies. He indicated that the Department currently pays approximately \$5,000 less than what some state agencies pay equivalent positions.
- **Initiative #2 -- Merit Increase Pool (\$74,704).** Commissioner Feeney indicated that rewarding performance is a key for this agency. He noted that merit increases helps the Department differentiate between the performances of high and low performing staff members.
- **Initiative #3 -- Increase Examination Force (\$86,675).** Commissioner Feeney explained that the Department needed to devote additional resources to mentoring and supporting newly hired field examiners to ensure they obtain the skills and experiences necessary to fulfil the Department's supervisory responsibilities. He indicated, with 66% of examination force having less than 2 years' experience, there was a

critical need for more mentoring and coaching of these short tenured staff. Mr. Feeney pointed out that existing staffing level necessitate that most of the supervisors time is currently spent performing exams.

- **Replacement/Capital Improvement Plan (\$59,577).** Commissioner Feeney noted that the plan includes replacing the buildings carpeting and HVAC, and provides funding to hire a consultant to assist the Department in determining how best to integrate the Department's database with its new electronic document repository.

Mr. Feeney reiterated that each exceptional item stood on its own merit and the Commission had the discretion to pick and choose as it deems appropriate but he encourage the Commission to approve the \$3,935,394 budget and authorize 29.5 FTEs. He also noted that the fees that will be collected under the existing rule would be sufficient to cover the total proposal.

Mr. Tuma indicated that he found the data presented in the agenda packet to be very interesting and pointed out some of the statistics.

Mr. Gilman question if the Department was looking at remote analytics for determining risk profiles of credit unions to reduce need to have examiners onsite in the future. Mr. Feeney explained that the Department was very interested in making better use of technology and, in fact, had begun a program two years ago to perform more work offsite, however, it has initially met with some resistance. He also explained that NCUA Region IV was about to begin a pilot project on remote access which the Department will have the opportunity to participate in.

Mr. Vad indicated that the Commission had increased the Department's budget substantially over the last few years and he questioned in light of the current political and economic environment whether there might be some adverse consequences in approving the recommended budget. Mr. Feeney acknowledged that some may view a budget increase negatively, but if the Commission viewed the request as reasonable and prudent, it would be a justifiably exercise of the Commission's authority to approve it.

After a lengthy discussion, Mr. Farran moved that the Commission approve the proposed FY 2017 Operating Plan and Budget, with a total budget of \$3,935,394 and 29.5 FTEs. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

Mr. Feeney referred the Commission to the FY 2017 Operating Plan and more particular to the performance measure related to the percentage of credit unions to receive an annual examination. He noted that the credit union industry has been pushing to lengthen the interval between exams and indicated that this measure restricts the Department ability to extend the interval. Mr. Feeney suggested that a reduction in the percentage of required annual examination would afford the Department some flexibility to length the interval between examinations for some credit unions that have demonstrated safe and sound operations. There was discussion among the members and the Commissioner addressed questions.

Mr. Tuma moved that the Commission adjust the performance measure in the FY 2017 Operating Plan relative to the percentage of credit unions receiving annual examination from 87.5% to 80%. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(b) Next Commission Meeting – Vice Chair Morrow reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for November 4, 2016 at 9:00 a.m. in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Vice Chair Morrow adjourned the meeting at 9:56 a.m.

Manuel “Manny” Cavazos
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

FOLLOW-UP ACTION REPORT

CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 10-18-16)
<u>July 8, 2016</u>		
7 TAC Section 91.301 Field of Membership	Published in <i>Texas Register</i> as adopted rule	Published in <i>Texas Register</i> on 07-22-16
7 TAC Section 97.200 Employee Training Program	Published in <i>Texas Register</i> as adopted rule	Published in <i>Texas Register</i> on 07-22-16
7 TAC Subchapter P, Section 91.7000 Certificates of Indebtedness and 7 TAC Subchapter Q, Section 91.8000 Discovery of Confidential Information	Published in <i>Texas Register</i> as readopted	Published in <i>Texas Register</i> on 07-22-16
Chapter 151 (relating to Home Equity Lending Procedures) Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property) Chapter 153 (relating to Home Equity Lending)	Published in <i>Texas Register</i> as readopted interpretation rules	Published in <i>Texas Register</i> on 07-22-16
Chapter 153.5, 153.8, 153.13, 153.14, and 153.17 (relating to Home Equity Lending)	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 07-22-16
7 TAC Section 91.709 Member Business Lending	Published in <i>Texas Register</i> with a 30 day comment period	Published in <i>Texas Register</i> on 07-22-16

C

COMMITTEE REPORTS

The Commission currently has two standing committees. The Rules Committee did not meet during the interim between Commission meetings; however, the Commissioner Evaluation Committee will report on its activities and recommendations to the Commission

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

COMMISSIONER EVALUATION COMMITTEE

C. Discussion, Consideration and Possible Vote on the Proposed FY 2016 Performance Evaluation for the Commissioner.

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

Commission policy requires the Committee to coordinate the annual evaluation of the Commissioner's performance. The Committee will hold a public meeting on November 3, 2016, to discuss the Commissioner's proposed FY 2016 Performance Evaluation. The Committee's recommendations related to the Evaluation will be discussed in Executive Session.



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

Thursday, November 3, 2016
1:00 p.m.

* * * AGENDA * * *

- I. Call to Order (1:00 p.m.) - Chair Sherri Brannon Merket
 - a. Ascertain Quorum
 - b. Appoint Recording Secretary
 - c. Acknowledge Guests
 - d. Announce Executive Session
- II. Receive and Approve Minutes of the Committee Meeting on July 8, 2016
- III. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Approve the Commissioner's Proposed FY 2016 Performance Evaluation
- IV. Review Future Meeting Dates (Next Regularly Scheduled Committee Meeting – July 12, 2017)

Adjournment

Note: The Credit Union Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

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.

D

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.

PENDING AND ONGOING MATTERS

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, consider and possibly take action on:

- (a) the adoption of amendments to 7 TAC Section 91.709 Concerning Member Business Loans;
- (b) the adoption of the amendments to 7 TAC Part 8, Chapter 153, Sections 153.5 (Three Percent Fee Limitation), 153.8 (Security of Equity Loans), 153.13 (Preclosing Disclosure), 153.14 (One Year Prohibition), and 153.17 (Authorized Lenders) resulting from rule review;
- (c) the Department's FY 2016 Financial Performance; and
- (d) the Status of the State Credit Union System.

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

MEMBER BUSINESS LOANS

D. (a) Discussion and Consideration and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC Section 91.709 Concerning Member Business Loans.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.709. The Commission received fifteen (15) written comments on the proposed rule amendments during the comment period and one comment after the comment period. Twelve (12) commenters were in favor of the proposed rule. One commenter was partially in favor and partially opposed to the proposed rule. Two commenters objected to the proposed amendments. The comment received after the comment period urged the Commission to suspend adoption of the rule until the outcome of the Independent Community Bankers of America lawsuit against NCUA.

In general, the Rule was reviewed as a result of recent actions taken 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 revised 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 revised 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).

The proposed amendments closely tracks the provisions of NCUA's revised 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.

The Department is recommending three non-substantive changes to the proposed amendments that were published. The first non-substantive change is in Subsection (c)(1)(D) adding the missing verb “evaluating” between the words “in” and “collateral”. The second non-substantive change is in Subsection (i)(1)(C), changing the (4) to a (3). The third non-substantive change is in Subsection (k) changing 121.003 to 124.003.

RECOMMENDED ACTION: The Department requests that the Commission adopt the proposed amendments to Rule 91.709 with the noted non-substantive changes.

RECOMMENDED MOTION: I move that the Commission adopt the proposed amendments to **7 TAC Section 91.709** with non-substantive changes to the proposal that was previously published in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

Part 6. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Subchapter G. Lending Powers

The Credit Union Commission (Commission) adopts amendments to Texas Administrative Code Title 7, Section 91.709, Member Business Loans, with non-substantive changes from the proposed rule published in the July 22, 2016 issue of the *Texas Register* (41 TexReg 5301).

Section 15.402 of the Texas Finance Code authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Finance Code (the "Texas Credit Union Act"). In adopting any such rules, the Legislature has directed the Commission to consider the need to:

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

Section 121.0011 of the Texas Finance Code sets out the policy of the Texas Credit Union Act. In relevant part, it states: "The purposes of this subtitle are ... to delegate to the department rulemaking and discretionary authority that may be necessary to assure that credit unions operating under this subtitle may be sufficiently flexible and readily responsive to changes in economic conditions and practices, to maintain sound credit union growth ... to permit credit unions to effectively provide a full array of financial and financially related services, to provide effective supervision and regulation of credit unions and their fields of membership, and to clarify and modernize the law governing the credit unions doing business in this state. This subtitle is the public policy of this state and necessary to the public welfare." Furthermore, Section 121.004 of the Texas Finance Code expressly states: "This subtitle shall be liberally construed to effect its purposes."

As published, the amendments to the rule will promote a stable credit union environment, provide credit union members with convenient, safe, and competitive services, 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 promote or encourage economic development in Texas by providing state chartered 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, thus promoting a stable credit union environment and

providing credit union members with convenient, safe and competitive services. 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, thus promoting the safety and soundness of credit unions. Additional safety and soundness considerations are addressed by the proposed amendments clarification 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 124.003.

In general, the National Credit Union Administration (NCUA) adopted a final rule to modernize 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, effective January 1, 2017, 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 a 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 are grandfathered in NCUA's final rule. As a result, without action by the Commission, the grandfathered Texas Administrative Code Title 7, Section 91.709, Member Business Loans, 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 Commission thus proposed amendments to address this competitive disadvantage and to promote economic development in the state.

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 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 amendments contain prohibitions on certain types of commercial loans and contain an aggregate member business loan limit. The amendments will not take effect until January 1, 2017, to coincide with the effective date of NCUA's final 12 C.F.R. Part 723.

As adopted, the amendments make three non-substantive changes. The first non-substantive change is in Subsection (c)(1)(D) adding the missing verb "evaluating" between the words "in" and "collateral". The second non-substantive change is in Subsection (i)(1)(C), changing the (4) to a (3). The third non-substantive change is in Subsection (k) changing 121.003 to 124.003.

The Commission received fifteen (15) written comments on the proposed rule amendments during the comment period. Twelve (12) commenters were in favor of the proposed rule. One commenter, GECU Credit Union (GECU) was partially in favor and partially opposed to the proposed rule. GECU stated that clarification is needed as to whether the parity provision applies to both making and purchasing loans, in addition to servicing the loans. The Commission disagrees with this need for clarification and notes that the plain language of Texas Finance Code Section 123.003(a) governs. That language states: "A credit union may 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."

GECU also makes the following objections: (1) that for construction and development loans, the term "cost to complete" does not align with NCUA's rule; and (2) that NCUA's "regulation ensures that if the land was purchased over 12 months ago (for example in the 1950s, when the cost to purchase land was substantially less than current prices), then the appraised market value should be utilized." These objections are based on an inaccurate reading of the NCUA final rule. The NCUA final rule does not contain the language that GECU quotes.

GECU also objects that the proposed Subsection (h)(2) "indicates that these exceptions are not commercial loans if the outstanding aggregate net MBL balance is \$50,000 or greater. Conversely, the NCUA indicates that such loans are not commercial loans, but are MBLs and must be counted toward the aggregate limit." GECU's statement is based on an inaccurate reading of the NCUA final rule. In that rule, NCUA defines commercial loan as "Commercial loan means any loan ... and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, are equal to less than \$50,000." The Commission amendments define commercial loan as "a loan ... 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." Additionally, NCUA's rule in 12 C.F.R. §723.8 states: "Exceptions. Any loan secured by a lien on a 1- to 4-family residential property that is not a member's primary residence, and any loan secured by a vehicle manufactured for household use that will be used for a commercial, corporate, or other

business investment property or venture, or agricultural purpose, is not a commercial loan but it is a member business loan (if the outstanding aggregate net member business loan balance is \$50,000 or greater) and must be counted toward the aggregate limit on a federally insured credit union's member business loans." The proposed aggregate member business loan limit in the Commission's Subsection (h) provides: "(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." The Commission thus determines that there is no substantive difference between the NCUA final rule and the amendments.

GECU also objects that the list in the Commission amendment Subsection (i)(3) should be exclusive. The Commission disagrees that the amendments should be an exclusive list and notes the Commission's direction under Texas Finance Code, Section 15.402 (b-1): "In adopting rules under this section, the commission shall consider the need to: (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."

Finally, GECU seeks clarification concerning Subsection (k)'s reference to Texas Finance Code Section 121.003. The Commission acknowledges this typo and is making a non-substantive change in Subsection (k) changing 121.003 to 124.003.

The Texas Banker's Association objected to the amendments on the following grounds: (1) the amendments are beyond the scope of powers of the Commission; and (2) the amendments pose safety and soundness concerns, as does the federal rule. The Commission disagrees that it does not have the power to adopt the amendments. In general, a court will presume a rule adopted by an administrative agency to be valid, and the party challenging the rule has the burden of demonstrating its invalidity. See Texas Ass'n of Psychological Assocs. v. Texas State Bd. of Exam'rs of Psychologists, 439 S.W.3d 597, 603 (Tex. App.—Austin 2014, no pet.). To establish a rule's facial invalidity, the challenger must show that the rule (1) contravenes specific statutory language; (2) is counter to the statute's general objectives; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions. See Ware v. Texas Comm'n on Law Enforcement Officer Standards & Educ., No. 03-12-00740-CV, 2013 WL2157244, at *2 (Tex. App.—Austin May 16, 2013, no pet.) (mem. op.). Texas Finance Code Section 15.402 clearly authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Finance Code (the "Texas Credit Union Act"). Additionally, Texas Finance Code Section 121.0011 sets out the policy of the Texas Credit Union Act. In relevant part, Section 121.0011 states: "The purposes of this subtitle are to delegate to the

department rulemaking and discretionary authority that may be necessary to assure that credit unions operating under this subtitle may be sufficiently flexible and readily responsive to changes in economic conditions and practices, to maintain sound credit union growth ... to permit credit unions to effectively provide a full array of financial and financially related services, to provide effective supervision and regulation of credit unions and their fields of membership, and to clarify and modernize the law governing the credit unions doing business in this state. This subtitle is the public policy of this state and necessary to the public welfare." Furthermore, Texas Finance Code Section 121.004 expressly states: "This subtitle shall be liberally construed to effect its purposes." The Commission also disagrees that the proposed amendments pose safety and soundness concerns and finds instead that the amendments "preserve and promote the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness of credit unions" in accordance with Texas Finance Code Section 15.402 (b-1).

The Independent Bankers Association of Texas (IBAT) comment letter received during the comment period objected that the amendments circumvent the statutory requirement limiting member business loans to 12.25% of total credit union assets. The Commission notes that there is no statutory requirement limiting member business loans to 12.25% of total credit union assets. The 12.25% requirement was from the existing Commission rule found in Texas Administrative Code Title 7, Section 91.709, Member Business Loans, which the Commission has the statutory authority to change. IBAT also objects that credit unions may develop a policy that diminish safety and soundness principles; however, the Commission finds that the controls in the amendments are adequate to ensure safety and soundness. IBAT further objects that the Commission has not performed an analysis that reflects a need for increased commercial lending and that the Commission should provide proof there is a need for additional credit union lending and the benefit. The Commission notes that IBAT's final two objections concern items that are neither required under the Administrative Procedure Act nor under the Texas Finance Code.

The Commission received one comment from IBAT outside the comment period. That comment urged the Commission to suspend adoption of the rule until the outcome of the Independent Community Bankers of America's lawsuit against NCUA. The Commission disagrees with this suggested action. The Commission disagrees about the success of the challenge against the NCUA rule. The Commission also notes that even if the challenge is successful, the Commission independently has sufficient authority and justification under Section 15.402 of the Finance Code to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Finance Code (the "Texas Credit Union Act").

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

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, and under 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 amendments are Texas Finance Code, 124.001 and 124.003.

DRAFT

§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) type(s) of commercial loans permitted;

(B) trade area;

(C) 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;

(D) 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 size and complexity of the loan as appropriate to the size of the

credit union; the scope of the credit union's commercial loan activities; the level and depth of financial analysis necessary to evaluate financial trends and the condition of the borrower and the ability of the borrower to meet debt service requirements; requirements for a borrower-prepared projection when historic performance does not support projected debt payments; the financial statement quality and degree of verification sufficient to support an accurate financial analysis and risk assessment; the methods to be used in evaluating collateral authorized, including loan-to-value ratio limits; the means to secure various types of collateral; and other risk assessment analyses including analysis of the impact of current market conditions on the borrower.

(E) 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; the use of loan covenants when warranted; and the levels of loan approval authority commensurate with the proficiency of the individuals or committee of the credit union tasked with such approval authority in evaluating and understanding commercial loan risk, when considered in terms of the level of risk the borrowing relationship poses to the credit union;

(F) 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

(G) 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, overseeing and evaluating the performance of a commercial loan portfolio, including rating and quantifying risk through a credit risk rating system and collections and loss mitigation activities for the types of commercial lending in which the credit union is engaged. 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.

(D) 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 rating 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 meets the following conditions:

_____ (A) qualified personnel representing the interest of the credit union must conduct a review and approval of any line item construction budget prior to closing the loan;

_____ (B) a requisition and loan disbursement process approved by the credit union is established;

_____ (C) release or disbursement of loan funds occurs only after on-site inspections which are documented in a written report by qualified personnel who represents the interest of the credit union and certifies that the work requisitioned for payment has been satisfactorily completed, and the remaining funds available to be disbursed from the construction and development loan is sufficient to complete the project; and

_____ (D) each loan disbursement is subject to confirmation that no intervening liens have been filed.

(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 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, and dual approval of loan disbursements.

(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 (34) 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:

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

II. 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.

(j) 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 §1241.003.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(A) A balance sheet;~~

~~(B) An income statement;~~

~~(C) A cash flow analysis;~~

~~(D) Income tax data;~~

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

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

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

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

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

~~(C) Environment impact assessment, when applicable; and~~

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

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

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

~~(k) The board of directors must use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. A credit union can meet the experience requirement~~

through various approaches, including the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) The higher limit or ratio sought;
- (3) An explanation of the need to raise the limit or ratio;
- (4) Documentation supporting the credit union's ability to manage this activity; and
- (5) An analysis of the credit union's prior experience making member business loans, including as a minimum:
 - (A) the history of loan losses and loan delinquency;
 - (B) volume and cyclical or seasonal patterns;
 - (C) diversification;
 - (D) concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of net worth;
 - (E) underwriting standards and practices;
 - (F) types of loans grouped by purpose and collateral; and
 - (G) the qualifications of personnel responsible for underwriting and administering member business loans.
- ~~(p) In determining action on a waiver request made under subsection (n), the commissioner will consider the credit union's:

 - (1) Condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.
 - (2) Adequacy of policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if an approval decision is made.
 - (3) Record of performance. If the member business loan record is less than satisfactory or otherwise problematic, the waiver normally will be denied.
 - (4) Elevated level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.~~
- ~~(q) The commissioner will provide the NCUA regional director with a copy of each waiver request made under subsection (n). The regional director will be consulted on all waiver requests. The regional director will provide NCUA's views within 30 calendar days, or NCUA will be deemed to have concurred with the commissioner's decision. The thirty days will begin to run once the commissioner and the regional director agree that the waiver request is complete.~~
- ~~(r) A credit union may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.~~
- ~~(s) A credit union may not grant a member business loan to a compensated director unless the board of directors approves granting the loan and the compensated director is recused from the decision making process.~~
- ~~(t) If a credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by Commission Rules, then the credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program.~~
- ~~(u) For the purposes of this section, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

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

~~(2) Construction or development loan—a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use.~~

~~(3) Loan to value ratio—the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.~~

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

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

Isabel Velasquez

From: Bonnie Kankel [REDACTED]
Sent: Friday, October 07, 2016 3:04 PM
To: CUD Email
Subject: Proposed amendments to TAC 91.709
Attachments: TX_CUD_Business-Lending_100716.pdf

The attached letter is submitted on behalf of the Independent Bankers Association of Texas.

Bonnie Kankel
Vice President – Administration & Corporate Communications
Editor – *The Texas Independent Banker* magazine
Independent Bankers Association of Texas
bkankel@ibat.org phone 512.474.6889 fax 512.275.2284



INDEPENDENT BANKERS ASSOCIATION OF TEXAS

1700 RIO GRANDE STREET SUITE 100 AUSTIN, TEXAS 78701 P: 512.474.6889 F: 512.322.9004 WWW.IBAT.ORG

DARLA ROOKE IBAT CHAIRMAN DROOKE@JUNCTIONNATIONAL.COM JUNCTION NATIONAL BANK

JOE KIM KING IBAT CHAIRMAN-ELECT JKK@BRADYNATIONALBANK.COM BRADY NATIONAL BANK

RONNIE MILLER IBAT SECRETARY-TREASURER RMILLER@CNBANKTX.COM COMMUNITY NATIONAL BANK, HONDO

DOAK CRABTREE LEADERSHIP DIVISION CHAIRMAN DCRABTREE@HAPPYBANK.COM HAPPY STATE BANK, STRATFORD

WILLARD J. STILL IBAT EDUCATION FOUNDATION CHAIRMAN WSTILL@AMBANKWACO.COM AMERICAN BANK, N.A., WACO

ROGERS POPE, JR. IMMEDIATE PAST CHAIRMAN RPOPEJR@TEXASBANKANDTRUST.COM TEXAS BANK AND TRUST, LONGVIEW

CHRISTOPHER L. WILLISTON, CAE PRESIDENT AND CEO CWILLISTON@IBAT.ORG

STEPHEN Y. SCURLOCK EXECUTIVE VICE PRESIDENT SSCRLOCK@IBAT.ORG

JULIE COURTNEY, CAE, CMP SENIOR VICE PRESIDENT JCOURTNEY@IBAT.ORG

JANE HOLSTIEN SENIOR VICE PRESIDENT JHOLSTIEN@IBAT.ORG

URSULA L. JIMENEZ, CAE SENIOR VICE PRESIDENT UJIMENEZ@IBAT.ORG

CURT NELSON IBAT SERVICES PRESIDENT CNELSON@IBAT.ORG

CHRISTOPHER L. WILLISTON, VI, CAE SENIOR VICE PRESIDENT CLWILLISTON@IBAT.ORG

October 7, 2016

Shari Shivers General Counsel Texas Credit Union Department 914 East Anderson Lane Austin, Texas 78752-1699

Sent by email: cudmail@tud.texas.gov

RE: Proposed amendments to Title 7 of the Texas Administrative Code, §91.709, relating to member business lending activities

Dear Ms. Shivers:

On August 19, 2016, the Independent Bankers Association of Texas (IBAT), a trade association representing approximately 400 independent community banks domiciled in the state of Texas, submitted comments on the proposed amendments to Title 7 of the Texas Administrative Code, §91.709, relating to member business lending activities. While we appreciate that opportunity to comment and recognize that the deadline for submitting comments on the proposal has passed, a subsequent and significant event necessitates an additional request of the Credit Union Commission (Commission).

In the Texas Register preamble to the rule proposal,¹ the Commission stated that the amendments to the rule were proposed as a result of the National Credit Union Administration's amendment of federal rules regarding member business loans. However, less than three weeks after the comment period closed, the Independent Community Bankers of America filed a lawsuit against the NCUA in the U.S. District Court for the Eastern District of Virginia, arguing that the NCUA's member business loan amendment was in contravention of the Federal Credit Union and Administrative Procedures Acts.

While there is no way to predict the outcome of ICBA's lawsuit, because the federal rules are the expressed basis for the Commission's proposed amendments, it would be inappropriate for the Commission to adopt the proposed amendments while legal action is pending on the federal rules. Therefore, we respectfully ask that the Commission follow the lead of the Washington Department of Financial Institutions and suspend this rule proposal pending the outcome of this action.

Regardless of the outcome of ICBA's lawsuit, IBAT stands by the comments in its August 19 comment letter and, for the reasons stated therein, opposes adoption of the proposed amendment of 7 TAC §91.709.

We appreciate your time and attention to this matter.

Sincerely yours,

Christopher L. Williston, CAE President and CEO

¹ 41 TexReg 5300, July 22, 2016

Isabel Velasquez

From: Harold Feeney
Sent: Friday, August 19, 2016 7:27 AM
To: Shari Shivers; Isabel Velasquez
Subject: FW: Texas Credit Union Rule Member Business and Commercial Loans Letter
Attachments: toud business & commercial loan letter.pdf

From: Donald Green [REDACTED]
Sent: Thursday, August 18, 2016 3:21 PM
To: Harold Feeney <Harold.Feeney@tud.texas.gov>
Subject: Texas Credit Union Rule Member Business and Commercial Loans Letter

Please see attached Texas Credit Union Rule Member Business and Commercial Loan letter.

Rebecca McCoy
President & CEO



**AMERICA'S
CREDIT UNION**
2154 Forest Lane
P.O. Box 469046
Garland, TX 75046-9046
Direct 469.429.3228
Toll-Free 800.543.2811
Fax 469.429.3229
rebeccam@americascu.org

IMPORTANT: E-mails from this company normally contain confidential material for the sole use of the intended recipient. The use, distribution, or transmittal by an unintended recipient of any communication is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. E-mail transmissions cannot be guaranteed to be secure or error-free, and although practicing industry-standard precautions, the company cannot accept responsibility for any loss or damage arising from this transmission.



August 18, 2016

Mr. Harold Feeney, Commissioner
Texas Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

RE: Support Texas Credit Union Rule §91.709 Member Business and Commercial Loans

Dear Commissioner Feeney,

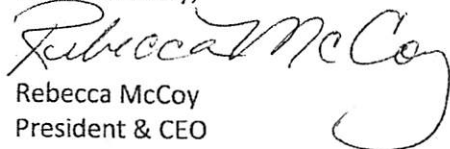
I am writing in support of Rule §91.709 Member Business and Commercial Loans. I encourage you to present this Rule for approval to the Texas Credit Union Commission as quickly as possible. It is critical to adopt this proposed Rule before December 31, 2016.

I am President & CEO of America's Credit Union (ACU). ACU engages in business and commercial loans. It is critical that my credit union and the 189 Texas charter credit unions operate under only one Business and Commercial Loan Rule. If the Commission does not take action on this Rule, we will be required to comply with not only the existing Business and Commercial Loan Rule, but also the new NCUA business and commercial loan rules. One rule is enough.

Perhaps more important to me, I want to be regulated by the Texas Rules; not the NCUA Rules. That allows your staff and you to interpret decisions, instead of having the NCUA administer the rule.

The NCUA Rule is significantly improved over the Rule currently in place. That does not mean there are not areas for improvement; in fact there are some areas to improve. At a later date, we will visit about what might be done on the Texas law to further improve the Rule. Hoping you will move this initiative forward for recommendation to the Commission before December 31.

Yours sincerely,


Rebecca McCoy
President & CEO

Carla Bienkowski

From: Bonnie Kankel [REDACTED]
Sent: Friday, August 19, 2016 10:09 AM
To: CUD Email
Subject: Proposed amendments to 7 TAC 91.709
Attachments: TX_CUD_Business_Lending_081916.pdf

On behalf of the Independent Bankers Association of Texas, I have attached a comment letter in regard to the above-referenced proposed amendments.

We appreciate the opportunity to comment.

Bonnie Kankel
Vice President – Administration & Corporate Communications
Independent Bankers Association of Texas
bkankel@ibat.org phone 512.474.6889 fax 512.275.2284



2016 AUG 22 AM 6:50

August 19, 2016

Sent by email: [cudmail@cud.texas.gov](mailto:cudmail@ cud.texas.gov)
**INDEPENDENT BANKERS
ASSOCIATION OF TEXAS**

1700 RIO GRANDE STREET
SUITE 100
AUSTIN, TEXAS 78701
P: 512.474.6889
F: 512.322.9004
WWW.IBAT.ORG

ROGERS POPE, JR.
IBAT CHAIRMAN
RPOPEJR@TEXASBANKANDTRUST.COM
TEXAS BANK AND TRUST, LONGVIEW

DARLA ROOKE
IBAT CHAIRMAN-ELECT
DROOKE@JUNCTIONNATIONAL.COM
JUNCTION NATIONAL BANK

JOE KIM KING
IBAT SECRETARY-TREASURER
JKK@BRADYNATIONALBANK.COM
BRADY NATIONAL BANK

MARK W. SHEFFIELD
LEADERSHIP DIVISION CHAIRMAN
MSHEFFIELD@FIRSTLOCKHART.COM
FIRST LOCKHART NATIONAL BANK

WILLARD J. STILL
IBAT EDUCATION FOUNDATION
CHAIRMAN
WSTILL@AMBANKWACO.COM
AMERICAN BANK, N.A., WACO

JOHN W. JAY
IMMEDIATE PAST CHAIRMAN
JWJAY@ROSCOEESTATEBANK.COM
ROSCOE STATE BANK

CHRISTOPHER L. WILLISTON, CAE
PRESIDENT AND CEO
CWILLISTON@IBAT.ORG

STEPHEN Y. SCURLOCK
EXECUTIVE VICE PRESIDENT
SSCURLOCK@IBAT.ORG

JULIE COURTNEY, CAE, CMP
SENIOR VICE PRESIDENT
JCOURTNEY@IBAT.ORG

JANE HOLSTIEN
SENIOR VICE PRESIDENT
JHOLSTIEN@IBAT.ORG

URSULA L. JIMENEZ, CAE
SENIOR VICE PRESIDENT
UJIMENEZ@IBAT.ORG

MARY E. LANGE, CAE
IBAT EDUCATION FOUNDATION
PRESIDENT
MLANGE@IBAT.ORG

CURT NELSON
IBAT SERVICES PRESIDENT
CNELSON@IBAT.ORG

CHRISTOPHER L. WILLISTON, VI, CAE
SENIOR VICE PRESIDENT
CLWILLISTON@IBAT.ORG

Shari Shivers
General Counsel
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

RE: Proposed amendments to Title 7 of the Texas Administrative Code,
§91.709, relating to member business lending activities

Dear Ms. Shivers:

The following comments are submitted on behalf of the Independent Bankers Association of Texas (IBAT), a trade association representing approximately 400 independent community banks domiciled in the state of Texas. We appreciate the opportunity to comment on this Credit Union Commission (CUC) proposal. IBAT does not support the CUC's proposed amendment of 7 TAC §91.709, which is designed to help Texas' state-chartered credit unions increase their commercial and business lending.

The proposed rules appear to circumvent the statutory requirement limiting member business loans to 12.25% of total credit union assets that protects taxpayers and the National Credit Union Share Insurance Fund (NCUSIF). Additionally, the proposal would replace the definitive requirements for collateral and security, equity, loans limits, and waiver processes for commercial loans with broad principles.

To protect the NCUSIF from large losses and to keep Texas' state-chartered credit unions focused on their mission, reasonable limits have been adopted to prevent them from engaging in anything more than insignificant amounts of commercial lending. By amending rules in a manner that encourages the further expansion of commercial and business lending by Texas' state-chartered credit unions, the CUC openly disregards the elevated risk characteristics that come with commercial lending and could jeopardize the share insurance protecting depositors. Replacing certainty with a focus on broad principles that clarify regulatory expectations would create a threat to the share insurance fund and taxpayers.

Without proven measures for defining the minimum collateral amounts and types needed to properly protect against future loss, a credit union may develop a policy that diminishes the safety and soundness principles in favor of determining how much risk the regulator will tolerate. The proposed rules depend on credit union staff who are inexperienced in business and commercial lending to have the experience, knowledge, ability, and motivation to create appropriate collateral requirements. Our members in a variety of markets have reported credit unions are offering very liberal terms to commercial borrowers, including extended maturities, well below market rates and little if any owner

Shari Shivers
Credit Union Department
August 19, 2016
Page Two

equity in projects. Texas experienced a distorted and depressed real estate market in the 1980s, in no small part because of the entrance of the savings and loan industry into the commercial real estate lending space. There is cause for concern, if not alarm, at the further loosening of lending standards for credit unions and the possibility of a repeat of what has become known as “the bad old days of banking” by long-time Texas bankers. The results and the risks to the share insurance fund and taxpayers are uncertain at best. What is certain is that the risks will be greater under the proposed rules at a time when appropriate risk assessment and control is imperative to a financial institution’s stability and survival.

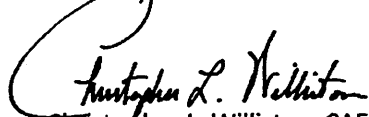
The proposal would allow large, mostly out-of-state, credit unions to make tens of millions of dollars of business loans in Texas without a cap. The CUC has not performed an analysis that reflects a need for increased commercial lending by credit unions. The CUC should provide proof that there is a need for additional credit union business and commercial lending and that the benefit, if any, will likely exceed the substantial risks involved.

The only justification given by the CUC for loosening the existing rational limits on credit union commercial and business lending is that there is a National Credit Union Administration (NCUA) rule that goes into effect on January 1, 2017, and the CUC wants to grant parity to Texas’ state-chartered credit unions. The fault in the CUC’s reasoning is that, in adopting their rule, the NCUA ignored the same risks and failed the same logical tests that the CUC is prepared to ignore. An act of a federal agency amending rules incautiously and without considering the risks is no basis for amending sensible and practical rules that protect the safety and soundness of our financial system and insurance fund. With so much at risk, parity, in and of itself, is not enough. At the very least, the CUC needs to commission an independent study of the risks and benefits before taking what we believe is a reckless act.

The current requirements are specifically designed to minimize all commercial and business lending by credit unions. To mitigate risk to the U.S. taxpayer and preserve the existential purpose of credit unions (i.e. to serve consumers—with an emphasis on consumers of modest means—who have a common bond), the CUC should adopt rules that limit commercial and member business lending rather than expand them. Any CUC action encouraging expansion of member business and commercial lending will contradict the reasons for chartering credit unions, result in jeopardizing the safety and soundness of Texas’ state-chartered credit unions, and place undue financial risk on the share insurance fund and the U.S. taxpayer.

IBAT appreciates the opportunity to comment on this proposal.

Sincerely


Christopher L. Williston, CAE
President and CEO

Carla Bienkowski

From: Celeste Embrey [REDACTED]
Sent: Monday, August 22, 2016 3:48 PM
To: CUD Email
Subject: Proposed amendments to 7 TAC 91.709
Attachments: TBA Member Business Lending Letter.pdf

Attached please find the comments of Eric Sandberg on behalf of the Texas Bankers Association.

Thank you,

Celeste

Celeste Embrey
Assistant General Counsel
Texas Bankers Association
203 W. 10th St.
Austin, TX 78701
(512)334-0937 (direct)
(512)417-2004 (mobile)



August 22, 2016

Shari Shivers
General Counsel
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

Re: Proposed amendments to Title 7 of the Texas Administrative Code,
Section 91.709, Member Business and Commercial Loans

Dear Ms. Shivers:

The Texas Credit Union Commission is proposing amendments to the Texas Administrative Code to enhance the commercial lending powers of Texas chartered credit unions. The rationale offered is that, due to federal changes in member business loan authority, 12 C.F.R. 723, state charters should be given competitive parity based on the Texas parity statute, Texas Finance Code Section 123.003. The Texas Bankers Association is strongly opposed to the proposed amendments.

The TBA objects to the legality of the recent actions by the National Credit Union Administration on business lending as being beyond the scope of powers authorized by Congress. Congress made it clear in 1998 that credit unions should be focused on consumer lending. Restrictions were placed on business lending to make sure that credit unions maintain a consumer focus. The proposed Texas amendments, because they are based upon federal actions of questionable validity, are similarly tainted.

The Texas proposal and its federal counterpart also pose safety and soundness concerns. Neither the NCUA nor the Credit Union Department have established that they are prepared to supervise institutions with expanding commercial loan portfolios. Since 2010, five credit unions have failed because of business lending programs. These five failures counted for a fourth of all losses to the NCUSIF during that period. Exhibit A for the lack of institutional knowledge as well as weak supervision is the failure of Texans Credit Union. Texans failed in 2011 and required a \$60 million capital note from the NCUSIF to avoid insolvency. The institution's business loan charge-offs and delinquencies totaled \$101.6 million, 57% of its total business loans.

In conclusion, TBA opposes the Credit Union Commission proposal as based upon federal regulations that go beyond Congressional intent as well as the potential threat to the safe and sound operation of credit unions engaged in business lending.

Sincerely,

J. Eric T. Sandberg, Jr.
President and CEO

Carla Bienkowski

From: Jackie Kapalski <jkapalski@ctecu.org>
Sent: Friday, August 19, 2016 10:05 AM
To: CUD Email
Cc: syashewski@cornerstoneleague.coop
Subject: CTECU - Proposed Revisions to MBL, 7 TAC 91.709
Attachments: scan0381.pdf

Importance: High

Dear Commission Members and Commissioner Feeney:

CTECU strongly urges the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017.


I respectfully request you accept my attached letter to that effect.

Sincerely,
Jackie
713.295.6404 (Direct Line)

Mrs. "Jackie" Jocelyn H. Kapalski, SCMS, CCUFC

NMLS ID 1107591

President/CEO

 *serving employees of Chevron Corporation*

P O Box 430

Bellaire, TX 77402-0430

Physical Address: 4800 Fournace, BOB, Room E-133D

P:713/432-0038 F:713/432-0737

"It Is Your Attitude, Not Your Aptitude, That Determines Your Altitude."

– Zig Ziglar



Shared Branching

It doesn't matter where you work, live or vacation
we have a branch near you!

[Click here](#)
to find a branch
near you!

RECEIVED
CREDIT UNION
DEPARTMENT

2016 AUG 22 AM 6: 50



serving employees of Chevron Corporation

-Main Office-
4800 Fournace Place
BOB, Room E133
Bellaire, Texas 77401
(713)432-0038
FAX (713)432-0737

-Wilcrest Office-
3100 Wilcrest, Suite #141
Houston, Texas 77042
(713)532-7570
FAX (713)532-7578

August 19, 2016

Texas Credit Union Commission
914 E. Anderson Lane
Austin, TX 78752-1699

Sent via Email to cudmail@tud.texas.gov

RE: Proposed Revisions to Member Business Lending, 7 TAC 91.709

Dear Commission Members and Commissioner Feeney,

This letter represents comments from CTECU in response to the Commission's proposed changes to the member business lending rule ["MBL"], 7 TAC 91.709. Our credit union offices are located in Bellaire and Houston and serve employees and annuitants of Chevron Corporation.

We strongly urge the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017. We look forward to working with the Commission on future refinements of the MBL rule, but for now it is of utmost importance to adopt an updated MBL rule so that Texas chartered credit unions are not subject to both the TCUD rule and the NCUA rule. We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue to make refinements to the rule, to create the most effective environment for Texas credit unions to meet their members needs for MBL's and commercial loans.

The revised rule would provide several benefits such as eliminating detailed collateral criteria and portfolio limits thereby providing flexibility while focusing on broad yet well-defined principles to set out clear regulatory expectations.

Thank you for the opportunity to comment on this very important issue. Again, we believe it is important for the Commission to adopt an updated MBL rule to prevent state chartered credit unions being subject to two MBL rules. Please feel free to contact me with any questions you may have.

Sincerely,

Mrs. "Jackie" Jocelyn H. Kapalski, SCMS, CCUFC
President/CEO

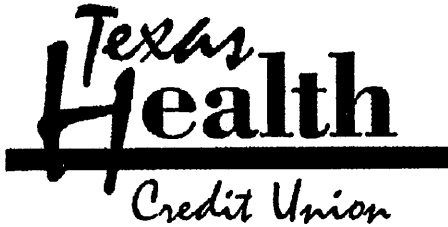
cc: file

Carla Bienkowski

From: Tammy Botkin [REDACTED]
Sent: Friday, August 19, 2016 10:01 AM
To: CUD Email
Subject: Proposed Member Business Lending rule
Attachments: MBL Rule Proposal.docx

Good Morning,
Please see attached for our comment letter regarding the proposed Member Business Lending rule. I encourage you to adopt the proposed changes to the rule.
Thank you for your consideration.
Tammy

Tammy Botkin
President/CEO
NMLS# 700703
P. O. Box 4003
Austin, TX 78765
512-454-4636



RECEIVED
CREDIT UNION
DEPARTMENT

2016 AUG 22 AM 6:50

August 19, 2016

Texas Credit Union Commission
914 E. Anderson Lane
Austin, TX 78752-1699

Sent via Email to cudmail@tud.texas.gov

RE: Proposed Revisions to Member Business Lending, 7 TAC 91.709

Dear Commission Members and Commissioner Feeney,

This letter represents comments from Texas Health Credit Union in response to the Commission's proposed changes to the member business lending rule ["MBL"], 7 TAC 91.709. Our credit union is located in Austin and serves State employees, Whole Foods employees, their families, and small businesses and neighbors in our area.

We strongly urge the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017. We look forward to working with the Commission on future refinements of the MBL rule, but for now it is of utmost importance to adopt an updated MBL rule so that Texas chartered credit unions are not subject to both the TCUD rule and the NCUA rule. We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue to make refinements to the rule, to create the most effective environment for Texas credit unions to meet their members needs for MBL's and commercial loans.

The revised rule would provide several benefits such as eliminating detailed collateral criteria and portfolio limits thereby providing flexibility while focusing on broad yet well-defined principles to set out clear regulatory expectations.

Thank you for the opportunity to comment on this very important issue. Again, we believe it is important for the Commission to adopt an updated MBL rule to prevent state chartered credit unions being subject to two MBL rules. Please feel free to contact me with any questions you may have.

Sincerely,

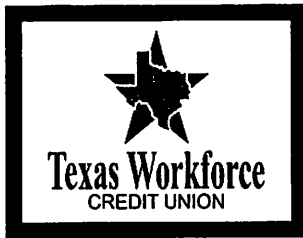
Tammy Botkin
President/CEO
Texas Health Credit Union
4800 Grover Avenue
Austin, TX 78756
512-454-4636

Carla Bienkowski

From: Texas Workforce Credit Union [REDACTED]
Sent: Friday, August 19, 2016 12:22 PM
To: CUD Email
Cc: syashewski@cornerstoneleague.coop
Subject: comment letter MBL
Attachments: MLB LTR 8-19-16.docx

Mary Dunagan, President
Texas Workforce Credit Union
210-521-2898 Office 210-521-3846 (fax)

RECEIVED
CREDIT UNION
DEPARTMENT



Texas Workforce Credit Union
PO Box 760746
San Antonio, TX 78245
Phone (210) 521-2898 Fax (210) 521-3846
twcu@satx.rr.com

AUG 22 AM 6:50

August 19, 2016

Texas Credit Union Commission
914 E. Anderson Lane
Austin, TX 78752-1699

Sent Via Email to cudmail@cud.texas.gov

RE: Proposed Revisions to Member Business Lending, 7 TAC 91.709

Dear Commission Members and Commissioner Feeney,

This letter represents comments from Texas Workforce Credit Union in response to the Commission's proposed changes to the member business lending rule ["MBL"], 7 TAC 91.709. Our credit union is located in San Antonio, TX and serves employees of the Texas Workforce Commission and their families, persons who work, live or go to school within 10 miles of our office.

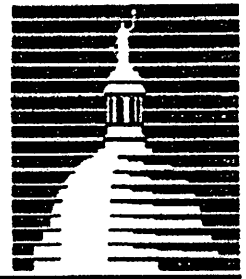
We strongly urge the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017. We look forward to working with the Commission on future refinements of the MBL rule, but for now it is of utmost importance to adopt an updated MBL rule so that Texas chartered credit unions are not subject to both the TCUD rule and the NCUA rule. We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue to make refinements to the rule, to create the most effective environment for Texas credit unions to meet their members needs for MBL's and commercial loans. The revised rule would provide several benefits such as eliminating detailed collateral criteria and portfolio limits thereby providing flexibility while focusing on broad yet well-defined principles to set out clear regulatory expectations.

Thank you for the opportunity to comment on this very important issue. Again, we believe it is important for the Commission to adopt an updated MBL rule to prevent state chartered credit unions being subject to two MBL rules. Please feel free to contact me with any questions you may have.

Sincerely,

Mary Dunagan, President
Texas Workforce Credit Union
210.521.2898 (office) 210.521.3846 (fax)

CAPITOL CREDIT UNION



Wednesday, August 17, 2016

Mr. Harold Feeney, Commissioner
Texas Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

RECEIVED
CREDIT UNION
DEPARTMENT
2016 AUG 22 AM 6:42

RE: Support Texas Credit Union Rule §91.709 Member Business and Commercial Loans

Dear Commissioner Feeney:

I am writing in support of Rule §91.709 Member Business and Commercial Loans. I encourage you to present this Rule for approval. It is very important to adopt this proposed rule before 31 December 2016.

I am President and CEO of Capitol Credit Union and want to make sure that there will be consistency in the Rule between the State and NCUA. If the Commission does not take action on this Rule we will be required to comply with not only the existing Business Loan Rule, but also the new NCUA business rules.

While the NCUA Rule has some areas for improvement it is significantly better than the Rule currently in place. Thank you for your consideration with this very important matter.

Sincerely,

Pierre Cardenas
President/CEO

Carla Bienkowski

From: Craig Atkinson <Craig@houstonhighwaycu.com>
Sent: Monday, August 22, 2016 8:07 AM
To: CUD Email
Cc: Craig Atkinson; Austin McCafferty; Teresa Briggs; Juan Villegas
Subject: Proposed Revisions 7 TAC 91.709
Attachments: TCUD MBL 7 TAC 91-709 Comment Atkinson.pdf

Attached you will find a comment letter regarding the proposed revisions to MBL 7 TAC 91.709
Thank you for your considerations and efforts on this proposal.

Craig Atkinson

Craig Atkinson - President
SCMS, CUDE, CUERME, CCUFC, CUCE
craig@houstonhighwaycu.com | Phone: 713-864-4438x106 | Direct: 713-864-4546
Cell: 713-614-3780 | Fax: 713-864-1714



Houston
Highway
CREDIT UNION

your road to
financial success



☹ Bank Victim
☺ CU Member

8120 Washington Avenue • Houston • 77007 • Texas • USA • <https://www.houstonhighwaycu.com/>

This message is confidential. It may also be privileged or otherwise protected by work product immunity or other legal rules. If you have received it by mistake, please let us know by e-mail reply and delete it from your system; you may not copy this message or disclose its contents to anyone. Please send us by fax any message containing deadlines as incoming e-mails are not screened for response deadlines. The integrity and security of this message cannot be guaranteed on the Internet.



Houston Highway
CREDIT UNION

RECEIVED
CREDIT UNION
DEPARTMENT

2016 AUG 22 AM 8:57

your road to financial success

www.houstonhighwaycu.com

August 22, 2016

Texas Credit Union Commission
914 E. Anderson Lane
Austin, TX 78752-1699

Sent Via Email to cudmail@tud.texas.gov

RE: Proposed Revisions to Member Business Lending, 7 TAC 91.709

Dear Commission Members and Commissioner Feeney,

This letter represents comments from Houston Highway Credit Union in response to the Commission's proposed changes to the member business lending rule ["MBL"], 7 TAC 91.709. Our credit union is located in Houston Texas and serves Texas Department of Transportation as well as a local 10-mile radius.

We strongly urge the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017. We look forward to working with the Commission on future refinements of the MBL rule, but for now it is of utmost importance to adopt an updated MBL rule so that Texas chartered credit unions are not subject to both the TCUD rule and the NCUA rule. We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue to make refinements to the rule, to create the most effective environment for Texas credit unions to meet their members needs for MBL's and commercial loans.

The revised rule would provide several benefits such as eliminating detailed collateral criteria and portfolio limits thereby providing flexibility while focusing on broad yet well-defined principles to set out clear regulatory expectations.

Thank you for the opportunity to comment on this very important issue. Again, we believe it is important for the Commission to adopt an updated MBL rule to prevent state chartered credit unions being subject to two MBL rules. Please feel free to contact me with any questions you may have.

Sincerely,

Craig Atkinson
President





"We Do The Most For You"

RECEIVED
CREDIT UNION
DEPARTMENT

2016 AUG 22 PM 2:38

Lone Star

PO Box 1480
Lone Star, TX 75668
(903) 656-2576

Daingerfield

1206 Linda Drive
Daingerfield, TX 75638
(903) 645-2206

Real Estate Office

109 Lamar Street
Daingerfield, TX 75638
(903) 645-7930

Jefferson

302 E. Broadway
Jefferson, TX 75657
(903) 665-8998

Mt. Pleasant South

1405 South Jefferson Ave.
Mt. Pleasant, TX 75455
(903) 577-3500

Mt. Pleasant North

105 W. 18th Street
Mt. Pleasant, TX 75455
(903) 572-3201

Diana

PO Box 5
Diana, TX 75640
(903) 663-6200

Hughes Springs

PO Box 159
Hughes Springs, TX 75656
(903) 639-4115

www.TheNetCU.com

August 17, 2016

Mr. Harold Feeney, Commissioner
Texas Credit Union Department
914 East Anderson Lane
Austin, TX 78752-1699

RE: Support Texas Credit Union Rule 91.709 – MBL and Commercial Loans

Dear Commissioner Feeney:

On behalf of North East Texas Credit Union I am writing in support of 91.709 Member Business and Commercial Loans. I think it is imperative that this rule be approved and in place before December 31, 2016.

I am President/CEO of North East Texas Credit Union (NETCU). NETCU has, since its inception made Member Business Loans to its members. It is important to me and I believe to the other 184 State Chartered Credit Unions that we are regulated by the Texas rules and regulations, not NCUA.

Thank you for your consideration,

Kay Stewart
President/CEO

CC: Suzanne Yashewski

Carla Bienkowski

RECEIVED
CREDIT UNION
DEPARTMENT

From: Fran Lovelace <flovelace@5PointCU.org>
Sent: Monday, August 22, 2016 10:23 AM
To: CUD Email
Subject: MBL TCUD proposal comment Letter August 2016
Attachments: MBL TCUD proposal comment Letter August 2016.docx

2016 AUG 22 PM 3: 00

Please find attached comment letter concerning the MBL Proposal.

Sincerely,

Fran Lovelace, CUCE
Compliance Officer
409.726.8299 p | 409.726.8499 f
FLovelace@5PointCU.org



[website](#) | [promotions](#) | [rates](#) | [careers](#)

Attention:

The information contained in this message and or attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any system and destroy any copies.

This e-mail message has been scanned for Viruses and Content and cleared by Sophos.



August 22, 2016

Texas Credit Union Commission
914 E. Anderson Lane
Austin, TX 78752-1699

Sent Via Email to cudmail@tud.texas.gov

RE: Proposed Revisions to Member Business Lending, 7 TAC 91.709

Dear Commission Members and Commissioner Feeney,

This letter represents comments from FivePoint Credit Union in response to the Commission's proposed changes to the member business lending rule ["MBL"], 7 TAC 91.709. Our credit union is located in Port Arthur and serves Jefferson, Hardin, Orange, Jasper, Newton counties, and Conroe and Magnolia ISD.

We strongly urge the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017. We look forward to working with the Commission on future refinements of the MBL rule, but for now it is of utmost importance to adopt an updated MBL rule so that Texas chartered credit unions are not subject to both the TCUD rule and the NCUA rule. We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue to make refinements to the rule, to create the most effective environment for Texas credit unions to meet their members needs for MBL's and commercial loans.

The revised rule would provide several benefits such as eliminating detailed collateral criteria and portfolio limits thereby providing flexibility while focusing on broad yet well-defined principles to set out clear regulatory expectations.

Thank you for the opportunity to comment on this very important issue. Again, we believe it is important for the Commission to adopt an updated MBL rule to prevent state chartered credit unions being subject to two MBL rules. Please feel free to contact me with any questions you may have.

Sincerely,

Fran Lovelace

Compliance Officer

FivePoint Credit Union

flovelace@5pointcu.org

409.726.8299

Carla Bienkowski

From: Jennifer Lord [REDACTED]
Sent: Monday, August 22, 2016 4:10 PM
To: CUD Email
Cc: Isaac Johnson; Todd Lucas
Subject: TCUD PROPOSED RULE: Member Business & Commercial Loans (91.709)
Attachments: TDECU Letter to proposed member business lending rules v3.pdf

Please find the attached comment letter from TDECU regarding the proposed Member Business Lending Rule.

Thank you.

Jennifer Lord
Executive Assistant

TDECU – Your Credit Union | 1001 FM 2004, Lake Jackson, Texas 77566 | www.TDECU.org
Toll Free: 1-800-839-1154 ext. 8306 | Direct: 979-238-8306 | Fax: 979-299-0211
Email jlord@tdecu.org | www.tdecu.org

TDECU

YOUR CREDIT UNION

August 22, 2016

Commissioner Harold E. Feeney
Texas Credit Union Department 914
East Anderson Lane
Austin, Texas 78752-1699

Re: Comments to Proposed Business and Commercial Lending Rules

Dear Commissioner Feeney:

TDECU - Your Credit Union would like to express our appreciation to the Texas Credit Union Department for your consideration of our comments to the Commissioner's proposed amendments to §91.709 - Member Business and Commercial Loans.

TDECU is supportive of the Commissioner's goals to promote an equitable and competitive environment by drafting the proposed rules so as to allow our business members with the same convenient, safe and competitive services available in the marketplace by preserving and promoting competitive parity of Texas state-chartered credit unions with other depository institutions and promoting economic development in Texas. Generally, we believe the proposed rules will further these goals and support not only TDECU's ability to continue to grow, but the growth of all Texas state-chartered credit unions.

Particularly, TDECU is supportive of the proposed rule's shifting from the current prescriptive approach to a more principles-based methodology that emphasizes sound risk management practices for business lending, and thusly eliminating the current waiver process for most exceptions. Having the ability to set commercial underwriting standards independently, commensurate with its own business model and risk appetite will further promote economic development, and competitive parity of Texas state-chartered credit unions with federally-chartered credit unions, community banks, and other depository institutions.

Respectfully,



Stephanie Sherrodd, President & CEO
TDECU – Your Credit Union



August 18, 2016

Ms. Shari Shivers
General Counsel
Texas Credit Union Department
914 East Anderson Lane
Austin, TX 78752-1699

Dear Ms. Shivers:

On behalf of the Texas Credit Union Association, I'd like to provide comments on the proposed changes to Sec. 91.709 Member Business and Commercial Loans.

We support the Commission adopting the proposed changes to 91.709 so that Texas State chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017.

We would welcome the opportunity to work with the Department on further refinements to the MBL rule, that will enhance the state charter and make sure Texas credit unions have the opportunity to meet the needs of their members in making MBL's and commercial loans.

In addition, it is important that the examination and enforcement process allows the proposed changes to the MBL rule to work. If the examination force embraces this new regulatory approach in the proposed MBL and commercial loan rule, the opportunity for this new approach will have a greater likelihood of success in meeting the needs of Texas credit unions, allowing these changes to be successful.

The revised rule appears to have great promise by taking the approach of eliminating detailed collateral criteria and portfolio limits, thereby providing flexibility while focusing on broad, yet well-defined principles to set out clear regulatory expectations.

We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue working with NCUA to make improvements to the rule in 2017.

The "no less restrictive" requirement in the Federal rule raises concerns about maintaining the autonomy of the state chartered system. It is important to retain the essential tension between the state and federal charter, so that state charters can be a source of innovation in meeting the needs of their members, and state regulators are allowed to fulfill their supervisory responsibilities.

Respectfully,

A handwritten signature in black ink, appearing to read "Jeff Huffman", with a long horizontal line extending to the right from the end of the signature.

Jeff Huffman
President
Texas Credit Union Association

Wednesday, August 17, 2016

Mr. Harold Feeney, Commissioner
Texas Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

RE: Support Texas Credit Union Rule §91.709 Member Business and Commercial Loans

Dear Commissioner Feeney:

I am writing in support of Rule §91.709 Member Business and Commercial Loans. I encourage you to present this Rule for approval to the Commission as quickly as possible. It is critical to adopt this proposed rule before 31 December 2016.

I am President & CEO of Texoma Community Credit Union (TCCU). TCCU engages in Business and Commercial loans; although it is a relatively small \$1,880,000 book of business loans. Nevertheless, it is critical that my credit union and the 189 Texas charter credit unions operate under only one Business Loan Rule. If the Commission does not take action on this Rule we will be required to comply with not only the existing Business Loan Rule, but also the new NCUA business rules. One rule is enough.

Perhaps more important to me, I want to be regulated by the Texas Rules; not the NCUA Rules. That allows your staff and you to interpret decisions, instead of having the NCUA administer the rule.

The NCUA Rule is significantly improved over the Rule currently in place. That does not mean there are not areas for improvement; in fact there are some areas to improve. At a later date we will visit about what might be done on the Texas law to further improve the Rule. Hoping you will move this initiative forward for recommendation to the Texas Credit Union Commission before 31, December, I am,

Yours sincerely,

/s/

L. Wayne Mansur
President & CEO
Texoma Community Credit Union
P. O. Box 1320
Wichita Falls, Texas 76307

Carla Bienkowski

From: Sean Cahill sean.cahill@southwest66.com
Sent: Wednesday, August 24, 2016 11:58 AM
To: CUD Email
Subject: Comment letter on MBL Proposal
Attachments: Comment+Letter+on+TCUD+MBL+proposal.docx

Thank you for your consideration.

Thank you,
Sean

Sean M. Cahill, CCUIP, CUERME, SCMS
President / CEO
Southwest 66 Credit Union
P.O. Box 12010
Odessa, TX 79768
Office - 432-363-6600
Fax - 432-367-0611
Email - Sean.Cahill@southwest66.com



CONFIDENTIAL

The information contained in this email is confidential information intended for the sole use of the addressee. If the reader of this email is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this email in error, please immediately notify the sender.

August 24, 2016

Texas Credit Union Commission
914 E. Anderson Lane
Austin, TX 78752-1699

Sent Via Email to cudmail@tud.texas.gov

RE: Proposed Revisions to Member Business Lending, 7 TAC 91.709

Dear Commission Members and Commissioner Feeney,

This letter represents comments from Southwest 66 Credit Union in response to the Commission's proposed changes to the member business lending rule ["MBL"], 7 TAC 91.709. Our credit union is located in Odessa, Texas and serves Ector and Midland Counties.

We strongly urge the Commission to adopt the proposed changes to 91.709 so that Texas state chartered credit unions will not be at a competitive disadvantage with federally chartered credit unions when NCUA's new MBL rule goes into effect in January of 2017. We look forward to working with the Commission on future refinements of the MBL rule, but for now it is of utmost importance to adopt an updated MBL rule so that Texas chartered credit unions are not subject to both the TCUD rule and the NCUA rule. We believe that a strong dual chartering system is important for successful state charters in Texas, and hope the Department will continue to make refinements to the rule, to create the most effective environment for Texas credit unions to meet their members needs for MBL's and commercial loans.

The revised rule would provide several benefits such as eliminating detailed collateral criteria and portfolio limits thereby providing flexibility while focusing on broad yet well-defined principles to set out clear regulatory expectations.

Thank you for the opportunity to comment on this very important issue. Again, we believe it is important for the Commission to adopt an updated MBL rule to prevent state chartered credit unions being subject to two MBL rules. Please feel free to contact me with any questions you may have.

Sincerely,

Sean M. Cahill

CEO / President

Southwest 66 Credit Union

Email – sean.cahill@southwest66.com

Phone – 432-368-3039

Carla Bienkowski

From: Nicole Bradford [redacted]
Sent: Monday, August 22, 2016 4:26 PM
To: CUD Email
Cc: Darlene Palmore; Nicole Bradford
Subject: GECU Comments on Proposed Changes to 91.709, Member Business and Commercial Loans
Attachments: GECU Comments on Proposed Changes to 91.709, MBL and Commercial Loans.pdf

Hello,

Please find our comments on the proposed changes to §91.709 related to Member Business and Commercial Loans.

Thank you,

Nicole Bradford, MBA, BSACS, CUCE | Compliance Manager
GECU | P.O. Box 20998 | El Paso, TX 79998-0998 | 915-774-8289 | gecu.com

What matters to you matters to us



August 22, 2016

Shari Shivers
General Counsel
Texas Credit Union Department
914 East Anderson Lane
Austin, TX 78752-1699

Re: Title 7 of the Texas Administrative Code, §91.709 Member Business and Commercial Loans

Dear Ms. Shivers,

On behalf of GECU, the largest locally owned state-chartered credit union in El Paso, TX, this letter is in response to the request for comments regarding the recent proposed rule amending Title 7 of the Texas Administrative Code (TAC) §91.709 concerning Member Business and Commercial Loans. GECU currently serves a membership of over 349,500 with assets greater than \$2.3 billion. We appreciate the opportunity to comment on the proposal and commend the Credit Union Commission (Commission) for drafting an amendment to its member business lending (MBL) rule to align with the National Credit Union Administration's (NCUA) new 12 C.F.R. Part 723.

Similar to the NCUA's new MBL rule, the proposal would completely revitalize the existing regulation. The proposal would modernize the MBL regulatory requirements and limitations by eliminating strict underwriting criteria and waiver requirements in favor of a principles-based approach. Such revisions provide Texas state-chartered credit unions with more flexibility in the administration of an MBL program that best fits the needs of their members.

The proposed rule would provide GECU a greater opportunity to serve our membership and increase the availability of capital to small businesses, particularly in our low-income and underserved community. Further, the replacement of a standard approach with a more performance-based methodology will allow GECU to be more competitive in the business lending market and provide consumers with products and services to meet their specific business needs. This approach will also aid in creating jobs and encouraging growth throughout our local community while maintaining compliance with regulatory requirements, and safety and soundness standards.

As a state-chartered credit union in Texas, one of the few states to maintain an MBL rule, it is imperative that the Commission adopt revisions to §91.709 in alignment with the NCUA's Part 723. Adoption of these revisions is necessary to avoid placing GECU and other Texas state-chartered credit unions at a significant competitive disadvantage to federally-chartered credit unions operating under the NCUA's regulation. Therefore, we support the majority of the revisions the Commission has proposed to §91.709; however, there are some areas we feel would benefit from additional clarification and consideration, as further outlined in detail below.

Parity

The parity provision provided in subsection (b) provides equality when making and purchase MBLs, but does not address potential restrictiveness when servicing such loans. Additional clarification is needed as to whether this provision applies to both making and purchasing loans, in addition to servicing them.

Construction and Development Loans

The term "cost to complete" defined in subsection (f)(1)(B) does not align with the NCUA's final rule. Specifically, the delineation of qualifying costs for land in the TAC rule is outlined as "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." Conversely, NCUA's final rule states "the value of the land, determined as the lesser of appraised market value or purchase price for land held less than 12 months, and as the appraised market value for land held longer than 12 months."

The additional verbiage included in NCUA's regulation ensures that if land was purchased over 12 months ago (for example in the 1950s, when the cost to purchase land was substantially less than current prices), then the appraised market value should be utilized. The omission of this language in the TAC rule could result in undervaluing the cost to complete a Construction and Development Loan, which would in turn affect the Loan-to-Value and ultimately, the amount we may lend to the prospective borrower.

It appears the parity language provided in subsection (b) permit making of the loan described above under the NCUA rules. However, it would be preferable for the state and federal rules to be consistent in this matter for clarity.

Aggregate Member Business Loan Limit

In subsection (h)(2), a listing of exceptions to the calculation of aggregate member business loan limit is provided. However, the proposal indicates that these exceptions are not commercial loans if the outstanding aggregate net MBL balance is \$50,000 or greater. Conversely, the NCUA indicates that such loans are not commercial loans, but are MBLs and must be counted toward the aggregate limit. It appears that the Commission's proposal indicates that the definition of a commercial loan is dependent upon the loan balance, which directly conflicts with the language provided by the NCUA in their final rule.

Aggregation and Attribution for Commercial Loans

The proposed language in subsection (i)(3) includes a descriptive list of the what will be constituted as "common enterprise." However, the proposal also includes a provision that allows the Texas Credit Union Department (Department) to determine based on an evaluation of facts and circumstances or particular transactions that a common enterprise exists outside of the definition provided. We feel the listing provided is sufficient and are concerned that the subjective language permits the Department to determine what constitutes common enterprise on a case-by-case basis. We recommend this language be removed or specific guidance as to how the Department will make such a determination be included.

Finance Code Limitation

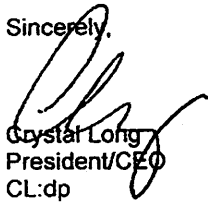
We are seeking additional clarification concerning the language provided in subsection (k) as such a limitation is not provided in the NCUA's final rule. Additionally, we were unable to locate a reference in the Texas Finance Code §121.003 addressing this limitation.

Supervisory Guidance

We urge the Commission to ensure additional supervisory guidance is issued outlining the specific risk management expectations in addition to significant training for examiners to ensure examiner expectations are aligned with modifications to the MBL rule and supervisory expectations. Further, given that examiners will be unable to rely on the regulation for compliance requirements, a comprehensive understanding of commercial lending requirements to properly evaluate and examine commercial loan programs is essential.

We appreciate the opportunity to comment on the proposal. If you have questions regarding our comments, please contact me at (915) 774-8203.

Sincerely,



Crystal Long
President/CEO
CL:dp

Carla Bienkowski

From: Shari Shivers
Sent: Wednesday, August 24, 2016 7:37 PM
To: Carla Bienkowski
Subject: FW: Clarifications concerning your MBL Comment Letter
Attachments: NCUA Final Rule Part 723 Member Business Lending.pdf

Importance: High

[REDACTED]

From: Shari Shivers
Sent: Wednesday, August 24, 2016 7:39 PM
To: 'crystal.lonlg@mygecu.org' [REDACTED]
Cc: Harold Feeney <harold.feeney@tud.texas.gov>; Robert Etheridge <roberte@tud.texas.gov>
Subject: Clarifications concerning your MBL Comment Letter
Importance: High

Dear Ms. Long,

Thank you so much for your comment letter. You thoughtfully recommend a number of substantive changes.

NCUA is waiting for us to determine whether we will be making substantive changes to our rule (thus requiring a republishing of our rule and another 30-day comment period resulting in a rule being adopted in March of 2017). Before we can advise them, I just need answers to some questions concerning a two substantive changes recommended in your comment letter please.

1. You state that the NCUA final rule (see the attached: the actual rule starts on page 13554) states: "the value of the land, determined as the lesser of appraised market value or purchase price for land held less than 12 months, and as the appraised market value for land held longer than 12 months". Commenters recommend that statement, but I cannot find that statement in the actual rule itself. I have searched all of Part 723 but am not finding that language. **Can you please provide a cite for that statement?** In Section 723.6, Construction and Development Loans, I found the following language, but it does not contain the language you quote:

For a construction or development loan, collateral value is the lesser of the project's cost to complete or its prospective market value. (1) For the purposes of this section, 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 general contractor's fees, and other expenses normally included in a construction contract such as bonding and contractor insurance. Qualifying costs include the value of the land, determined as the lesser of appraised market value or purchase price plus the cost of any improvements. Qualifying costs also include interest, 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 estate 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. (2) For the purposes of this section, 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 prospective value opinions may be required to reflect the time frame during which development, construction, and occupancy occur. The prospective market value "as-completed" reflects the property's market value as of the time that development is to be completed. The prospective market value "as-stabilized" reflects the property's market value as of the time the 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 property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties.

2. You state that NCUA's regulation ensures that if the land was purchased over 12 months ago (for example in the 1950s, when the cost to purchase land was substantially less than current prices), then the appraised market value should be utilized. Again, I am finding commenters recommending that statement, but I cannot find that statement in the actual NCUA rule. **Can you provide me a cite for this please?**

Thank you for getting back to us promptly so we can determine how to advise NCUA.

If you have any questions, please do not hesitate to call me.

Shari

Shari Shivers

Assistant Commissioner and General Counsel

Credit Union Department

[512.832.4804](tel:512.832.4804)/[shari.shivers@cud.texas.gov](mailto:shari.shivers@ cud.texas.gov)

This email, including all attachments, may be confidential and/or privileged under law - specifically including Tex. R. Civ. P. 192, Article V of the Texas Rules of Evidence, and other applicable statutory, quasi-statutory, and common law. Accordingly, pursuant to Chapter 552 of the Texas Gov't Code (the "Texas Public Information Act") and court interpretations thereof, the information that is contained within this communication may not be subject to disclosure to the public under Section 552.101, et seq., of the Code - specifically including Sections 552.103, 552.107, 552.108, and 552.111 - and further may be protected from disclosure or production for other purposes, such as in the context of civil discovery. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED.

HOME EQUITY INTERPRETATIONS

D. (b) Discussion, Consideration and Possible Vote to Take Action on the Adoption of the Amendments to 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to 7 TAC, Part 8, Chapter 153. The main purpose of the amendments is to implement changes resulting from the Commission's review of this chapter under Texas Government Code Section 2001.039. The amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections. The Commission received no written comments on the proposed rule amendments during the comment period.

RECOMMENDED ACTION: The Department request that the Commission approve the amendments to 7 TAC Sections 153.5, 153.8, 153.13, 153.14, and 153.17.

RECOMMENDED MOTION: I move that the Commission adopt the proposed amendments to 7 TAC, Part 8, Chapter 153 as previously published in the *Texas Register*.

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") adopt 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, §153.14, concerning One Year Prohibition, and §153.17, concerning Authorized Lenders.

The commissions adopt the amendments without changes to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5309).

The commissions received no written comments on the proposal.

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 incorporated suggestions offered by stakeholders into the amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting adoption.

The individual purposes of the adopted 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 adopted 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." Previously, §153.13(3) explained that lenders could 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, 2015, 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 adopted 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. Previously, this provision cited 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), an adopted 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 adoption, §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, an adopted amendment replaces this phrase with "another provision of Section 50(a)(6)(P)."

Adopted 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, adopted new §153.17(3) explains that a person licensed under Chapter 156 is a mortgage broker for purposes of the constitution.

Adopted new §153.17(4) replaces former paragraphs (3) and (4), and explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution.

Former §153.17(3) explained that a nondepository lender must hold a license under Chapter 342 to make, transact, or negotiate a secondary mortgage loan. Former §153.17(4) explained 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 former 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 adoption 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.

The amendments are adopted 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 adopted 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 (Finance Commission)

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

Issued in Austin, Texas on October 21, 2016.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

Certification (Credit Union Commission)

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

Issued in Austin, Texas on November 4, 2016.

Harold Feeney
Credit Union Commissioner
Joint Financial Regulatory Agencies

FY 2016 FINANCIAL PERFORMANCE

D. (c) Discussion and Consideration of the Department's FY 2016 Financial Performance and the FY 2017 Budget.

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 preliminary draft of the FY 2016 Report highlights the Department's financial performance for the twelve month period ending August 31, 2016. The Report is unaudited and is prepared on a cash basis of accounting.

The FY 2017 budget of \$3.9 million was approved by the Commission at its July 2016 meeting. Financial statements for the first month of FY 2017 will be provided at the meeting.

RECOMMENDED ACTION: No action is anticipated.

DRAFT

Credit Union Department
 Operating Statement & Budget Analysis
 For the Period Ended month 13 08/31/16

	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	\$1,000	\$1,000	
Other			\$0	\$0	
Operating Income Subtotal		\$3,254,527	\$3,259,039	\$4,512	
Interest Income					
Interest Trust			\$3,389	\$3,389	
Interest USAS			\$0	\$0	
Interest Income Subtotal		\$0	\$3,389	\$3,389	
Refunds		\$0	\$1,006	\$1,006	
TOTAL REVENUES	\$3,254,527	\$3,254,527	\$3,263,433	\$8,906	
Excess Reserve Funds utilized to reduce operating fees	\$411,754	\$411,754	\$411,754	\$0	
FY 15 Remaining Balance in USAS	\$34,636	\$34,636	\$35,260	\$624	
TOTAL FUNDS AVAILABLE TO COVER EXPENDITURES	\$3,700,917	\$3,700,917	\$3,710,447	\$9,530	

DRAFT

Credit Union Department
Operating Statement & Budget Analysis
For the Period Ended month 13 08/31/16

	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	\$2,255,221	\$2,152,644	\$102,577	95%
Employee Benefits	\$712,880	\$712,880	\$672,173	\$40,707	94%
Total Personnel Expenses	\$2,968,101	\$2,968,101	\$2,824,817	\$143,284	95%
Travel Expenses:					
In State	\$387,100	\$387,100	\$386,162	\$938	100%
Out-of-State	\$10,000	\$10,000	\$5,029	\$4,971	50%
Commission	\$11,000	\$11,000	\$9,116	\$1,884	83%
Total Travel Expenses	\$408,100	\$408,100	\$400,307	\$7,793	98%
Other Operating Expenses:					
Communication/Utilities	\$38,320	\$38,320	\$43,507	(\$5,187)	114%
Professional Services/Fees	\$61,436	\$61,436	\$43,760	\$17,676	71%
Supplies/Materials	\$35,518	\$35,518	\$39,316	(\$3,798)	111%
Printing and Reproduction	\$500	\$500	\$3,768	(\$3,268)	754%
Repairs/Maintenance	\$51,670	\$51,670	\$37,458	\$14,212	72%
Rentals and Leases	\$4,761	\$4,761	\$6,301	(\$1,540)	132%
Other Operating	\$132,511	\$132,511	\$76,621	\$55,890	58%
Total Other Operating Expenses	\$324,716	\$324,716	\$250,731	\$73,985	77%
TOTAL EXPENDITURES	\$3,700,917	\$3,700,917	\$3,475,855	\$225,062	94%
SURPLUS FUNDS AVAILABLE FOR FUTURE EXPENDITURES	\$0	\$0	\$234,592	\$234,592	

FINANCIAL CONDITION

D. (d) 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 overall Texas economy remains sound. Most of Texas continues to have a positive economic outlook. While reduced activity in the energy sector has impacted some regions in Texas to various degrees, this segment appears to be improving as the price of oil (in early October 2016) rose to its highest weekly average since July 2015. In addition, positive performance in other industries continues to enhance job and wage growth which is resulting in a healthy pace of consumer spending. As of July 2016, the unemployment rate in Texas of 4.5 percent was below the national average of 4.9 percent.

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 strategic initiatives to generate additional revenue.

INDUSTRY STATUS: At **June 30, 2016**, there were **184** state-chartered credit unions in Texas. Assets in these credit unions totaled **\$35.88 billion**, which is an increase of **\$1.94 billion** since **June 30, 2015**, for an annualized growth rate of **5.40%**. The average net worth ratio rose to **10.14%**, down from **10.10%** at **June 30, 2015**.

Loans for Texas chartered credit unions totaled **\$25.21 billion** as of **June 30, 2016**. This is an increase of **\$2.28 billion** since **June 30, 2015** for an annualized growth rate of **9.9%**.

Shares for Texas chartered credit unions totaled **\$31.19 billion** as of **June 30, 2016**. This is an increase of **\$1.89 billion**, or **6.5%** since **June 30, 2015**.

Texas chartered credit unions average loan delinquency ratio was **0.70%** as of **June 30, 2016**, compared to a ratio of **0.58%** as of **June 30, 2015**.

At **June 30, 2016**, **35** state-chartered credit union reported year to date net operating losses, compared to **40** at **June 30, 2015**. These credit unions reported aggregate year to date negative net earnings of **\$2.04 million**; while the remaining **149** credit unions reported aggregate net income of **\$119.8 million**.

PROBLEM INSTITUTIONS: As of August 31, 2016, there were **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: As of August 31, 2016, the Department had the following administrative sanctions outstanding:

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

Chartering Activity

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

RECOMMENDED ACTION: No formal action is anticipated.

RATIO ANALYSIS

June 2016/June 2015

	June 30, 2016	June 30, 2015	Difference
# of Credit Unions	184	186	-2
Total Assets	\$35.883 B	\$33.540 B	\$2.343 B
Average Assets/CU	6.52 M	5.44 M	+1.08 K
Net Worth/Total Assets	10.14	10.10	+0.04
Net Worth Growth	\$6.28 M	\$9.43 M	-\$3.15 M
Return on Average Assets	0.67	0.95	-0.28
Net Interest Margin/ Average Assets	4.82	3.11	+1.71
Fee & Other Income/Average Assets	1.67	1.67	0
Operating Expense/Average Assets	3.69	3.66	+0.03
Provision for Loan Loss/Average Assets	0.50	0.38	+0.12
% of (Negative) Credit Union Earnings	19.0	22.0	-3
Total Loans/Total Shares	80.85	78.28	+2.57
Delinquent Loans/Total Loans	0.70	0.58	+0.12
Net Charge-Offs/Average Loans	0.64	0.54	+0.1
Share Growth	5.93	7.05	-1.12
Loan Growth	7.30	8.16	-0.86
Asset Growth	5.92	7.57	-1.65
Membership Growth	0.47	1.91	-1.44

E

NEW MATTERS

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

- (a) Discussion, Consideration, and Possible Vote to Take Action on the Readoption of the Department's Equal Employment and Workforce Diversity Plan.
- (b) Discussion and Consideration of the Findings of the Audit being conducted by the State Auditor's Office.

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

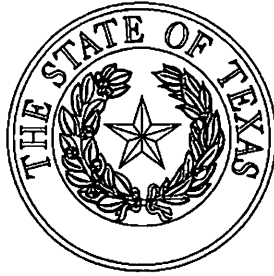
EQUAL EMPLOYMENT AND WORKFORCE
DIVERSITY PLAN

E. (a) Discussion, Consideration, and Possible Vote to Take Action on the Readoption of the Department's Equal Employment and Workforce Diversity Plan.

BACKGROUND: Finance Code Section 15.313 requires the Commission to prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The Commission originally approved the policy on October 10, 1997 and readopted it last October 16, 2015. The policy statement must be approved annually. Accordingly, the policy is presented for the Commission's consideration and approval.

RECOMMENDED ACTION: The Department recommends that the Commission readopt the Plan as presented.

RECOMMENDED MOTION: I move that the Commission readopt the Department's Equal Employment and Workforce Diversity Plan as recommended by staff.



**STATE OF TEXAS
CREDIT UNION DEPARTMENT**

**EQUAL EMPLOYMENT AND
WORKFORCE DIVERSITY PLAN**

Approved by Commission on October 10, 1997

Readopted by Commission on _____, 2016

TABLE OF CONTENTS

PREFACE	1
FOREWORD.....	1
CREDIT UNION DEPARTMENT	
EQUAL EMPLOYMENT AND WORKFORCE DIVERSITY PLAN. 2	
POLICY STATEMENT.....	2
RESPONSIBILITIES.....	3
GOALS.....	3
ACTIONS TO ACHIEVE GOALS.....	3
DISCIPLINE PROCEDURES	5
APPEAL AND GRIEVANCE PROCEDURES.....	5
MONITORING ACHIEVEMENTS.....	6
TIME FRAME FOR IMPLEMENTATION.....	6

PREFACE

This Equal Employment and Workforce Diversity Plan has been developed to formalize the Credit Union Commission's and the Credit Union Department's commitment to equal employment opportunity. The plan is designed to assure that the Department's personnel policies and practices promote equal employment opportunities and diversity in the workplace.

The Department recognizes that the full and equal participation of minorities, women, and disabled persons in all employment opportunities is a necessary component of any effective equal employment and diversity program. To achieve the goals in practical and meaningful terms, the Department has established objectives and timetables, and has assigned specific responsibilities to Commission members and Department staff.

The Department's Equal Employment and Workforce Diversity Plan is intended to conform in good faith with Title VII of the Civil Rights Act of 1964, codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C. the Civil Rights Act of 1991, codified as amended in scattered sections of 42 U.S.C. (Supp. III 1992), the Equal Pay Act of 1963, 29 U.S.C. Chapter 8 § 206(d), Title VII of the Civil Rights Act of the Rehabilitation Act of 1973, codified as amended in scattered sections of the 29 U.S.C and 31-41c U.S.C., the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 (2013), the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2013), and the Texas Labor Code, as well as the guidelines adopted by the Equal Employment Opportunity Commission on October 17, 1989 and Presidential Executive Order 11246.

FOREWORD

The Department's Equal Employment and Workforce Diversity Plan has been developed in accordance with the principles set forth in the Equal Employment Opportunity Coordinating Council's Affirmative Action Policy Statement. These principles outline the intent and goals of the Department's philosophy:

Equal Opportunity is the law of the land. In the public sector of our society, this means that all persons, regardless of race, color, religion, sex, national origin, age or disability, shall have equal access to positions in public service limited only by ability to do the job.

...vigorous enforcement of the laws against discrimination is essential. But equally, and perhaps even more important, are affirmative, voluntary efforts to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial or ethnic characteristics. Without such efforts, Equal Employment Opportunity is no more than a wish...

CREDIT UNION DEPARTMENT EQUAL EMPLOYMENT AND WORKFORCE DIVERSITY PLAN

Policy Statement

It shall be the public policy of the Credit Union Department not to discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability status. The Department shall take all necessary affirmative steps to insure the employment and promotion of otherwise qualified minorities, women, and disabled persons who may be underrepresented in the Department's work force.

The Department is committed to the principles of equal employment opportunity law and the spirit of workplace diversity. This plan has been prepared to ensure that the Department's equal employment and diversity policies shall be properly implemented and to ensure that no artificial barriers shall be intentionally or otherwise created to deny applicants for employment or employees of the Department equal employment opportunities. The plan is available in the Department's office for review by employees and applicants for employment. The plan is available to the general public on request.

The Department is fully committed to protecting the rights of all current and prospective employees by ensuring that these individuals are being properly treated and provided with employment and advancement opportunities based solely on each individual's qualifications and performance, without regard to his or her race, color, religion, national origin, sex, age or disability. These rights are promulgated in the statutes listed in the preface.

Supervisors are required to ensure that all employees and prospective employees are afforded equal employment opportunities. Also, through the Department's recruiting process, supervisors must strive to attain a work force profile that is in parity with Texas' statewide labor force availability by race/ethnicity and sex.

Advancement within the Department's organizational structure will be attained by meritorious performance; however, occupational parity based upon Texas' statewide labor force availability will be given consideration during the selection process.

The supervisors of the Credit Union Department shall not discriminate with regard to employment opportunities. They must work together and communicate freely with each other to ensure discrimination is not fostered within the Department.

Responsibilities

The Department's Equal Employment and Workforce Diversity Plan has the support of the Commission members, Commissioner, and other management or supervisory personnel. Specific responsibilities have been assigned and delegated to the Commission and management personnel to ensure that the necessary authority and power is available to implement the provisions of the plan.

The Commission is responsible for establishing policies and monitoring the implementation of the plan through periodic reports submitted by the Commissioner. The Commission, through Department staff, shall review the plan annually for purposes of revision or modification. The staff shall review the work force analysis and personnel policies, procedures, and practices and shall include recruitment, selection, promotions, job descriptions, classifications, compensation, discipline, or other terms and conditions affecting the equal employment opportunities of applicants for employment or employees. Any changes to the plan resulting from the annual review will be submitted to the Commission for approval.

The Assistant Commissioner shall be designated as the representative of the Department with the authority for execution of the plan. It shall be the responsibility of the Assistant Commissioner to ensure that compliance with the Commission's policies is implemented in an efficient and effective manner.

Goals

- I. To insure objectivity, consistency, uniformity and job relatedness through design and implementation of appropriate personnel policies, procedures and practices which affect the equal employment opportunities of the Department's employees and applicants for employment.
- II. To insure a diverse work force through the establishment of a monitoring and reporting system.

Actions to Achieve Goals

- I. Policy Dissemination
 - A. The Department shall use the communication network of the Texas Workforce Commission to provide notice of the Department's equal employment and diversity policy. In notifications posted for vacant positions, including posting on the Department's website, the Department shall include information that it is an equal employment opportunity employer.

- B. As part of new employee in-processing, each new employee shall receive a copy of the Department's Equal Employment and Workforce Diversity Plan and its Equal Employment Policy.

II. Recruitment

- A. To the extent possible, the Department shall utilize a wide range of recruiting sources to secure the maximum number of qualified minority, female and disabled applicants for available positions within all classification. Such sources shall include, as appropriate, statewide minority, female and disability associated organizations, educational institutions, newspapers, and the Texas Workforce Commission. The Department shall continue to expand and update its list of such recruiting sources including appropriate contact persons.
- B. Notices of vacant positions shall be posted in accordance with the regular ten (10) working day posting rule. Where vacancies occur in classifications that have been identified as being underutilized, the Department shall place emphasis on recruiting from minority, female, and disabled applicant sources, by distributing position notices to all appropriate recruitment sources identified in II.A.
- C. An Applicant Flow Record shall be maintained to determine the mix of candidates applying for vacant positions according to race, national origin, sex, and disability. This information shall be incorporated into the Agency Application Log.

III. Selection Procedures

The U. S. Equal Employment Opportunity Commission, the U. S. Civil Service Commission, the Department of Labor and the Department of Justice have issued Uniform Guidelines on Employee Selection Procedures. These guidelines address all phases of an employer's selection process and provide suggested requirements that, if adhered to, will greatly reduce an employer's susceptibility to charges of employment discrimination that involve the selection process.

- A. Position audits shall be conducted on a continuing basis (within resources available) to ensure that current position descriptions accurately reflect the actual duties, tasks, and responsibilities required to successfully perform the job. These audits shall also be used to determine the appropriateness of the minimum qualifications for the positions and to ensure that only valid, job-related qualifications are required.
- B. All testing and screening procedures shall be reviewed on a continuing basis (within resources available) to ensure their job-relatedness and validity. Information acquired from the position audits shall be used to construct valid, job-related tests and screening procedures.

- C. All employment interviews shall be reviewed for job relatedness. Non-job-related questions and those items that may tend to screen out a particular ethnic or racial group shall be eliminated. Technical assistance in the construction of interview questions and interviewing procedures shall be given to hiring authorities.
- D. All test scores and interview results shall be maintained for each classification in accordance with the State's record retention schedule. This information is to assess the presence of artificial barriers to equal employment opportunity.

IV. Upward Mobility

- A. Employees shall be encouraged to participate in training or educational opportunities that enhance their skills.
- B. In-service training programs shall be designed and implemented to increase promotion opportunities for employees. On-the-job training and/or cross-training programs shall be developed to expose employees to a broad range of job duties and experiences.

Discipline Procedures

The Department shall institute a progressive discipline system that is linked to specific policies and procedures with which personnel are expected to comply. Such a progressive discipline system will be designed in steps of severity ranging from written warnings to termination. This disciplinary system shall be designed and applied to ensure uniformity and consistency with Department policies prohibiting discrimination.

Appeal and Grievance Procedures

The Department shall provide appeal and grievance procedures designed to resolve complaints of employment discrimination alleged by employees. These procedures shall provide aggrieved employees the opportunity to discuss their problems at several levels.

These procedures shall help protect both the employee and the employer by providing both parties with the opportunity to have their position reviewed and considered by an impartial authority. These procedures shall provide safeguards against any and all occurrences of discrimination or any other preferential treatment that may adversely affect employees of the Department.

Monitoring Achievement

The Assistant Commissioner shall be responsible for administering and monitoring the implementation of the Department's Equal Employment and Workforce Diversity Plan and for identifying any revisions necessary to assure effective application. The Assistant Commissioner shall review such reports as include the following Annual EEO/Diversity Progress Report:

A. Workforce Analysis by Race, National Origin, Sex, and EEO Category

B. Personnel Transactions

The Commissioner shall submit to the Commission, at each regular Commission meeting, a status report which shall include a record of the following personnel transactions: 1) salary report, listed by race, national origin, sex, disability, and experience, 2) employees promoted, listed by race, national origin, sex, disability, and experience; and 5) employees terminated and resigned, listed by race, national origin, sex, and disability.

C. Applicant Flow

The Applicant Flow Report shall include a breakdown of all applicants by race, national origin, sex, disability, and position vacancy. The report, which is part of the Agency Application Log, shall also indicate whether or not a job offer was made, and the position of the person(s) who made the employment decision.

D. Appeal and Grievance Status

This report shall be submitted to the Commission. It will provide an itemized statistical summary of the number, status, and issues raised by employee grievances and discrimination complaints. No report is necessary if there have been no grievances or discrimination complaints.

Time Frame For Implementation

The Department shall implement and review the action program previously identified annually.

AUDIT

E. (b) Discussion and Consideration of the Findings of the Audit Being Conducted the State Auditor's Office.

BACKGROUND: The State Auditor's Office began an audit of the Department in May 2016. The audit objectives were to (1) verify the accuracy of certain financial and performance data and the effectiveness of related controls and (2) evaluate the agencies' processes for setting fees and penalties. The work also included the automated systems and processes that support the function being audited. Fieldwork was completed on August 4, 2016. The final Report of Audit is anticipated to be released publicly during November 2016.

RECOMMENDED ACTION: No formal action is anticipated.

CREDIT UNION DEPARTMENT

INDUSTRY STATUS

AND

DEPARTMENTAL OPERATION

Credit Union Department
Performance Measures for FY 2016
August 31, 2016

INFORMATION MEASURES

DESCRIPTION	JUNE	JULY	AUG	4th QTR TOTAL	YTD
Strategic Goal 1:					
Number of State-Chartered Credit Unions	184	184	184		
Number of Regular Examinations Performed	16	14	15	45	166
Number of Follow-up Contacts Made (Remedial Exams)	3	2	2	7	37
Number of Enforcement Actions Issued	0	0	1	1	3
Percentage of Credit Unions with Composite CAMEL Ratings of 1 or 2	86%	86%	86%		
Percentage of Assets Held in Credit Unions with Composite CAMEL Rating of 1 or 2	84%	91%	93%		
Percentage of Credit Unions that are Well-Capitalized as Defined by Federal Statute	98%	98%	98%		
Strategic Goal 2:					
Number of New Rules Adopted	0	0	0	0	7
Number of Rules Amended	0	2	0	2	7
Number of Rules Re-Adopted without change	0	44	0	44	62
Number of Applications Processed	4	0	9	13	57
Number of Requests for Interpretations/Opinions Relating to the Act & Rules Processed	0	0	0	0	2
Number of Contested Case Referred to State of Administrative Hearings	0	0	0	0	0
Number of Public Information Act Requests Processed	0	4	1	5	25
Number of Public Forums in Which the Department Participated	3	4	6	13	46
Total Assets (Dollars) in State-Chartered Credit Unions	\$35.8	\$35.9	\$35.9		
Percentage Increase (Decrease) in Total Aggregate Credit Union Assets	n/a	2.8%	n/a		
Strategic Goal 3:					
Number of Complaints Processed	19	23	22	64	265
Percentage of Credit Unions Providing Services to Low Income or Underserved Populations	24%	24%	25%	24%	25%

Credit Union Department
Performance Measures for FY 2016
August 31, 2016

INFORMATION MEASURES

DESCRIPTION	JUNE	JULY	AUG	4th QTR TOTAL	YTD
Strategic Goal 4:					
Annual Examiner Turnover Rate	6%	6%	0	12%	24%
Average Regulated Assets per Examiner (billion)	2.1	2.1	2.0	2.1	2.1
Annual staff turnover rate	7%	0	0	7%	18%
Number of Days of Employee Training	16.5	105	25	146.5	311
Number of purchases made from HUB Vendors	3	6	4	13	60
Percentage of purchases made from HUB Vendors	25%	38%	27%	30%	36%

TARGETED MEASURES

DESCRIPTION	TARGET	JUNE	JULY	AUG	4th QTR TOTAL	YTD
Strategic Goal 1:						
Percentage of Credit Unions Receiving Regular Examination Annually	90%	9%	8%	8%	24%	90%
Percentage of Complete Applications Approved or Denied Within 60 Days	100%	100%	n/a	100%	100%	100%
Percentage of Reports to Credit Unions within 20 Days	98%	100%	100%	100%	100%	99%
Strategic Goal 2:						
Percentage of Rule Changes provided to Credit Unions Within 60 Days After Adoption	100%	n/a	n/a	100%	100%	100%
Percentage of Interpretations and Opinions Issued Within 30 Days of Receipt	100%	n/a	n/a	n/a	n/a	100%
Strategic Goal 3:						
Percentage of Complaints Investigated and Responded to Within 30 Days of Receipt	95%	100%	100%	100%	100%	99%
Strategic Goal 3:						
Percentage of Credit Unions Indicating Quality Services Received on Annual Survey	90%	n/a	n/a	n/a	n/a	97%

AFFIRMATIVE ACTION/EEO QUARTERLY REPORT
4th 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 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
No. of Employees on 4th quarter	11	5	1	5	0	4	2	0	28
Resignations (retirees)	1	0	0	1	0	0	0	0	2
New Hires --	1	0	0	0	0	0	1	0	2
Grand Total of Employees	11	5	1	4	0	4	3	0	28
Promotions - 4th Quarter	1		1						2

Percent Male 53.57%
 Percent Female 46.43%

Salary Breakdown

	<u>3rd quarter</u>	<u>4th quarter</u>	<u>Average Tenure</u>
Average of Salaries	\$ 74,466	\$ 74,014	118.5 months
Average Salaries - White	\$ 83,018	\$ 84,255	122.5 months
Male	11 \$ 92,522	\$ 94,322	141.0 months
Female	5 \$ 62,108	\$ 62,108	81.9 months
Average Salaries - Black	\$ 68,632	\$ 67,139	142.7 months
Male	1 \$ 67,000	\$ 73,700	28.8 months
Female	4 \$ 68,958	\$ 65,498	171.1 months
Average Salaries - Hispanic	\$ 51,840	\$ 51,840	142.7 months
Male	0 \$ -	\$ -	0.0 months
Female	4 \$ 51,840	\$ 51,840	142.7 months
Average Salaries - Asian	\$ 68,800	\$ 60,422	70.5 months
Male	3 \$ 68,800	\$ 60,422	70.5 months
Female	0 \$ -	\$ -	0.0 months
	28		

Exmr. Experience - 4th quarter

Less than 1 year	7	Average Salary	\$ 46,667
1 - 2 years	2	Average Salary	\$ 56,008
2 - 5 years	3	Average Salary	\$ 63,737
5 - 10 years	0	Average Salary	
Over 10 years	6	Average Salary	\$ 96,603
Total	18	Average Salary	\$ 71,982

Annual EEO/Diversity Progress Report
Fiscal Year 2016

APPLICANT FLOW

Position:	Position Description:		
Posting #: <u>16-01</u>	Filled (Y/N): <u>N</u>	Date Filled: <u>N/A</u>	
Person(s) making employment decision: <u>Cary Cabe</u>			
Reason for selection of the final candidate: <u>No candidate selected</u>			

Posting #: <u>16-02</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>1/14/2016</u>	
Person(s) making employment decision: <u>Cary Cabe</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-03</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>1/29/2016</u>	
Person(s) making employment decision: <u>Harold Feeney</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-04</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>3/8/2016</u>	
Person(s) making employment decision: <u>Cary Cabe</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-05</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>3/21/2016</u>	
Person(s) making employment decision: <u>Robert Etheridge</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-06</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>6/13/2016</u>	
Person(s) making employment decision: <u>Mark Buie</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-07</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>5/9/2016</u>	
Person(s) making employment decision: <u>Michael Riepen</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-08</u>	Filled (Y/N): <u>N</u>	Date Filled: <u>N/A</u>	
Person(s) making employment decision: <u>Cary Cabe</u>			
Reason for selection of the final candidate: <u>No candidate selected</u>			

Posting #: <u>16-09</u>	Filled (Y/N): <u>Y</u>	Date Filled: <u>7/8/2016</u>	
Person(s) making employment decision: <u>Cary Cabe</u>			
Reason for selection of the final candidate: <u>Best qualified</u>			

Posting #: <u>16-10</u> Filled (Y/N): <u>Y</u> Date Filled: <u>7/8/2016</u>
Person(s) making employment decision: <u>Cary Cabe</u>
Reason for selection of the final candidate: <u>Best qualified</u>
Posting #: <u>16-11</u> Filled (Y/N): <u>Y</u> Date Filled: <u>9/15/2016</u>
Person(s) making employment decision: <u>Robert Etheridge</u>
Reason for selection of the final candidate: <u>Best qualified</u>

WORKFORCE ANALYSIS

Race Sex	White			Black ^[1]			Hispanic ^[2]			Asian ^[3]			Indian ^[4]			Other			Not Given		
	M	F	NG	M	F	NG	M	F	NG	M	F	NG	M	F	NG	M	F	NG	M	F	NG
Applications Received	22	9		12	29		7	12		4	1					3			2	4	18
Interviewed	6	3		4	2		1	3		1	1					1			2		5
Offers	4	1		1				2		1									1		1
Accept	4	1		1				2											1		1
Decline										1											

[1] Black or African American

[2] Hispanic or Latino

[3] Asian, Native Hawaiian or Other Pacific Islander

[4] American Indian / Alaskan

APPEAL AND GRIEVANCE STATUS

Number of grievances received: 0

Credit Union Department

Executive Summary

As of 08/31/16

*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	184	184	
Total Assets (Millions)	*31,715	*33,540	*34,203	*34,852	*35,774	*35,882	
APPLICATIONS (Received)							
Charters	0	0	0	0	0	0	0
Foreign Branches	0	0	0	0	0	0	0
Conversions	0	2	1	1	1	1	4
Mergers	3	9	1	1	0	0	2
Bylaws	64	60	23	5	6	11	45
Articles of Incorporation	5	2	0	1	0	0	1
Total	72	73	25	8	7	12	52
EXAMINATION ACTIVITIES							
Regular	68	81	20	28	25	31	104
Joint	95	75	20	8	20	14	62
Remedial	44	35	11	6	13	7	37
Total	207	191	51	42	58	52	203
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	5	5	5	3	2	2	
LUAs	2	0	0	0	0	0	
Cease & Desist Orders	0	2	3	2	1	1	
Dividend Restrictions	0	0	0	0	0	0	
Conservatorships	1	1	1	1	1	0	
Liquidations	1	2	2	2	2	2	
Total	9	10	11	8	6	5	
PERSONNEL STAFFING							
Field Examiners	17	14	18	17	18	18	
Total Personnel	26	24	28	26	28	28	
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	3,024	3,329	863	867	964	1,007	3,701
Actual Expenditures	3,009	3,066	805	844	871	956	3,476
Gifts and Bequests	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Actual Revenue	2,851	3,452	1,976	1	1,284	2	3,263

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	0	0	
Add: New Applications Filed	0	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	0	0	0	
FOREIGN BRANCH OFFICES							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: New Applications Filed	0	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	0	0	0	
CONVERSIONS							
Pending at Beginning of Period	0	1	0	1	1	2	
Add: Applications Filed	0	0	1	1	1	1	
Less: Approved	0	1	0	1	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	1	1	2	3	
MERGERS							
Pending at Beginning of Period	2	3	2	2	3	1	
Add: Applications Filed	1	1	1	1	0	0	
Less: Approved	2	2		0	2	0	
Denied/Withdrawn	1	0	1	0	0	0	
Pending at End of Period	0	2	2	3	1	1	
BYLAWS							
Pending at Beginning of Period	1	4	10	11	5	4	
Add: Applications Filed	15	17	23	5	6	11	
Less: Approved	11	11	21	11	7	9	
Denied/Withdrawn	0	0	1	0	0	0	
Pending at End of Period	5	10	11	5	4	6	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	0	1	0	0	1	0	
Add: Applications Filed	1	0	0	1	0	0	
Less: Approved	1	1	0	0	1	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	1	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	30	34
2	133	126	125	126	126	125
3	28	28	28	26	26	22
4	1	4	4	3	2	3
5	0	0	0	0	0	0
Total	188	185	186	184	184	184

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 8/31/2016
Determination Letters	5	5	5	5	2	5	2
LUAs	2	0	2	0	0	0	0
Cease & Desist Orders	0	3	1	2	1	2	1
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	1	0	0	1	0	1	0
Liquidations	1	1	0	2	0	0	2
Total	9	9	8	10	3	8	5

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	86	104	121%	56%	99%
Joint	82	62	76%	33%	100%
Remedial	39	37	95%	20%	100%
Total	207	203	98%	98%	99%

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	69	70	261
Closed	230	253	55	71	75	64	265
Avg. Days to Process	14	13	14	15	14	11	14
% Resolved in 30 Days	98%	98%	100%	98.6%	100%	100%	99%

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	3	1	16
Procedure Irregularity	34	21	2	8	4	3	17
Denial	0	0					0
Cross Collateralization	0	3	3				3
Credit Report Issues	21	16	7	5	6	6	24
Collateral Protection Insurance	5	8		1	1	3	5
ACCOUNT ISSUES							
NSF/Overdraft	0	0					0
Electronic Funds Transfer	7	15	1	1	7	5	14
Holds on Checks	1	6		3	1	2	6
Posting Order	7	3	1				1
Fraud/Unauthorized	15	22	4	9	8	4	25
Fees	29	33	5	5	10	9	29
Billing Disputes	5	5	2	1	1	1	5
Other	21	20	3	13	8	6	30
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	35	26	4	8	10	11	33
Account Closed/Frozen	8	18	3	7	2	4	16
Customer Service	22	32	13	3	10	8	34
Deceptive Advertisement	3	1		1		1	2
Vehicle Title	4	2		1	3		4
Website Issues	1	1			1		1
TOTAL	230	253	55	71	75	64	265

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		2
Federal-to-State	5	3			1		1
State-to-Federal	2	0					0
Total	8	5	0	1	2	0	3
Assets:							
State-to-State	20,338,698	49,143,057	-	204,775,607	204,775,607		
Federal-to-State	99,044,519	20,820,734	-		43,448,790	-	43,448,790
State-to-Federal	5,839,695	-	-	-			-
Total	125,222,912	69,963,791	-	204,775,607	248,224,397	-	43,448,790
CONVERSIONS							
Number:							
Federal-to-State	1	1	1				1
State-to-Federal	0	0		1			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
August 31, 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%	38%	67%
Commodities	21.1%	48%	56%

* 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					6,898	11,138	6,898
Commodities	55	786		1,030	1,599	3,810	3,470
Total	\$55	\$786	0	\$1,030	\$8,496	\$14,948	\$10,367

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	2	11	3
Commodities	1	1			2	8	4

Credit Union Department
Year to Date Assessment of HUB Related Activities
August 31, 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	9,380	48,800	277		26,765	41,734	85,222
Commodities	302	8,044		1,030	9,675	15,247	19,051
Total	\$9,682	\$56,844	\$277	\$1,030	\$36,440	\$56,981	\$104,273

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	2	2	2	1	5	45	12
Commodities	3	5			8		16

**Credit Union Department
Web Site Statistics
Report Range: 06/01/16 thru 08/31/16**

	Number
Total Visits:	
Number of Visits	7,342
Visitors	4,392
Page Views	16,350
Number of Repeat Visitors	3,280
Average Pages per Visit	2.23
Average Visit Duration	2:30
 Most Requested Pages:	
Home Page	6,928
Job Postings	1,317
Texas Rules for Credit Unions	980
Employment	785
Department Newsletter	549
 Most Downloaded Files:	
Newsletter June 2016	418
Rules for Credit Unions	391
Texas Credit Union Listings	389
Commission Policies Manual	326
Newsletter August 2016	280

**Monthly Survey Results
Examinations
June, 2016 thru August, 2016**

Reflects summary responses from 19 surveys received or 4 % of the 45 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.	16	1	1	1		
Q 2. The pre-examination requests were reasonable in scope.	18		1			
Q 3. Materials requested in the pre-examination were used during the examination.	16	2				1
Q 4. The pre-examination request made the examination run more efficiently.	17	1		1		
Q 5. The examiners were knowledgeable about your credit union.	11	6	2			
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	13	4	1	1		
Q 7. The examiners were responsive to your questions and concerns.	14	4		1		
Q 8. The examiners communicated effectively with the credit union throughout the examination.	15	3			1	
Q 9. The examiners treated you professionally.	18		1			
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	17	1	1			
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	19					
Q 12. Management was given the opportunity to react to the examination findings.	16	1	1	1		
Q 13. The examination was completed within a reasonable timeframe.	17	2				
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	18	1				
Q 15. The report was easy to understand.	18	1				
Q 16. The report accurately portrayed your credit union's practices and condition.	16	2			1	
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	16	3				
Q 18. The report contained useful recommendations for improving safety and soundness practices.	11	6	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.	15	1	1	1	1	
Q 20. The examination was conducted in a fair and objective manner.	16	1	1	1		

Applications

Reflects summary responses from 0 surveys received or 0 % of the 12 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. Department staff provided timely and accurate feedback/answers.						
Q 2. Department staff communicated with me in a courteous and professional manner.						
Q 3. The application process was efficient.						
Q 4. The Department's requests for information were reasonable.						
Q 5. The Department's website was helpful in completing my application.						

Complaints

Reflects summary responses from 4 surveys received or 6 % of the 62 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.	2	2				
Q 2. Department staff communicated with me in a courteous and professional manner.	2		1		1	
Q 3. I believe Department staff understood the basis of my complaint.	1	1		1	1	

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.	1		1	1	1	
Q 5. The explanation give was fair considering applicable laws.	1		1	1	1	
Q 6. The Department website was helpful in the complaint process.	2	1	1			