CREDIT UNION COMMISSION

Rules Committee Meeting

Credit Union Department Building
914 East Anderson Lane
Austin, Texas

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

AGENDA

TAB		PAGE
A.	Call to Order (1:00 p.m.) – Committee Chair Vik Vad a. Ascertain Quorum b. Appoint Recording Secretary c. Invitation for Public Input Regarding Rulemaking for Future Consideration	**4**
B.	Receive and Approve Minutes of the Rules Committee Meeting of March 3, 2016	**7**
C.	Unfinished Business	
	a. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 91.301 Concerning Field of Membership	**20**
	b. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 97.200 Concerning the Employee Training Program	**35**
D.	New Business	
	a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Section 91.7000 (Certificates of Indebtedness)	**41**
	b. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Section 91.8000 (Discovery of Confidential Information)	**47**
	c. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve for Publication and Comment the Proposed Amendment to 7 TAC Section 91.709 Concerning Member Business Loans	**52**
	d. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC, Part 8, Chapter 151 (relating to Home Equity Lending Procedures), Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property), and Chapter 153 (relating to Home Equity Lending)	**68**
	e. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 8, Chapter 153 Concerning Home Equity Lending from Rule Review	**78**

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D. New Business (continued)

f. Discussion of and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt the Fiscal Year 2017-2020 Rule Review Plan as Required by Section 2001.039, Government Code **86**

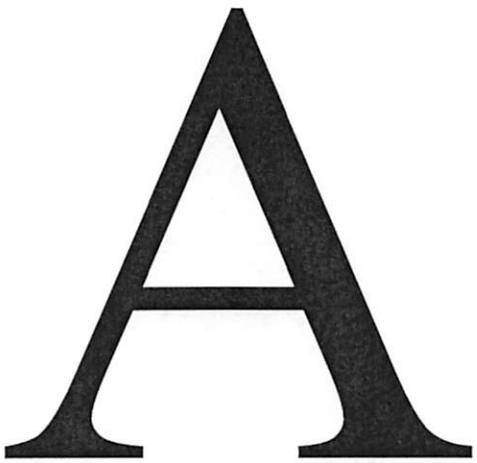
g. Discussion of and Possible Vote to Establish Tentative Date for Next Committee Meeting (November 3, 2016 at 1:00 p.m.) **89**

Adjournment

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

Meeting Recess: In the event the Commission does not finish deliberation of an item on the first day for which it was posted, the Commission might recess the meeting until the following day at the time and place announced at the time of recess.

Meeting Accessibility: Under the Americans with Disabilities Act, the Credit Union Commission will accommodate special needs. Those requesting auxiliary aids or services should notify Linda Clevlen, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752--(512) 837-9236, as far in advance of the meeting as possible.



CALL TO ORDER

TEXAS CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

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

Legal Counsel

- *Melissa Juarez*

Staff

- *Harold E. Feeney*
- *Shari Shivers*
- *Isabel Velasquez*

FUTURE COMMITTEE MEETING DATES

The committee meets on an "as needed" or "subject to the call of the chair" schedule. If a meeting is necessary, it would normally be held the day before a regularly scheduled commission meeting.

B

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on March 3, 2016, is located under ***TAB B***.

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

RECOMMENDED MOTION: I move that the minutes of the Committee's March 3, 2016, meeting be approved as presented.

RULES COMMITTEE
MEETING MINUTES
MARCH 3, 2016

A. CALL TO ORDER – Committee Chairman Vik Vad called the meeting to order at 1:01 p.m. at the Texas State Capitol Extension, Room E2.030, Austin, Texas pursuant to Chapter 551 of the Government Code. Other members present included Kay Stewart, Yusuf Farran, Steven "Steve" Gilman, Gary Tuma and Commission Chairman Manny Cavazos, ex-officio member. Assistant Attorney General Zindia Thomas was in attendance to serve as legal counsel. Staff members in attendance were Harold E. Feeney, Commissioner and Shari Shivers, Assistant Commissioner and General Counsel. Chairman Vad appointed Isabel Velasquez as recording secretary. The Chair also inquired and the Commissioner confirmed that the notice of the meeting was properly posted **(February 22, 2016, TRD#2016001355).**

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION**–Committee Chairman Vad invited public input on matters regarding rulemaking for future consideration by the committee.

  - **Isaac Johnson, General Counsel, Texas Dow Employees Credit Union**. Mr. Johnson thanked the Committee and Commission, on behalf of the credit union and its president, Stephanie Sherrodd, for their efforts to update the field of membership rules. Mr. Johnson reiterated that modernization of the rules was both necessary and appropriate and encouraged future consideration of possible amendments that would broaden the definitions surrounding facilities and offices.

B. RECEIVE MINUTES OF PREVIOUS MEETING (October 15, 2015)

Mr. Gilman moved to approve the minutes of October 15, 2015 as presented. Mr. Farran seconded the motion, and the motion was unanimously adopted.

C. UNFINISHED BUSINESS

Commissioner Feeney suggested that the Committee may want to consider taking up the first two agenda items together in order to facilitate discussions since both items deal basically with the same topic. There were no objections.

(a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Withdraw the Proposed Amendments to 7 TAC Sections 91.101 and 91.301 which Appeared in the October 30, 2015 Issue of the Texas Register.

(b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.301 Concerning Field of Membership.

Commissioner Feeney explained that in October the Commission approved for publication and comment the proposed amendments to Rules 91.101 (Definitions and Interpretations) and 91.301 (Field of Membership). He indicated that the stated purpose of the proposal was to stimulate discussion and engage interested persons in helping to develop appropriate provisions that fulfil public policy considerations and modernize the field of membership rules. He further explained that twenty (20) comments were received with about half in favor and half opposed to the proposal. Given the divergence of opinion, Mr. Feeney recommended that the October 2015 proposal be withdrawn and a new proposal be issued.

Commissioner Feeney explained that the new proposal concentrates solely on Rule 91.301 by prescribing political subdivisions within reasonable proximity of the

location of a credit union's office(s) as a presumptive "local service area". The amendments will also fully implement the intent of HB 1626 and facilitate the establishment of branches in geographic areas where there is a demonstrated need for credit union services.

Committee Chairman Vad opened the floor to the public for discussion.

- **Jeff Huffman, President of the Texas Credit Union Association.** Mr. Huffman commended efforts to revise the field of membership rule.
- **David Bleazard, President, First Service Credit Union.** Mr. Bleazard questioned whether there should be a definition of "reasonable proximity". Mr. Feeney indicated that "reasonable proximity" is existing language within the Rule and staff was not proposing any changes at this time.
- **Tim Adams, President, SPCO Credit Union.** Mr. Adams questioned whether any of the determining factors for approving a field of membership expansion would change in the future as a result of the proposed amendments. Mr. Feeney responded that the determinations should not change but he felt the convenience and certainty resulting from the use of recognized political jurisdictions should reduce regulatory burden on credit unions. Mr. Adams also inquired whether "gather" was a new basis for qualifying a group for membership. Mr. Feeney explained that Rule 91.101 prescribes the four types of affinity on which a community of interest could be based.
- **Isaac Johnson, General Counsel, Texas Dow Employees Credit Union.** Mr. Johnson indicated that NCUA includes ATMs in its definition of service facility and suggested that the Committee consider a similar definition.

Mr. Gilman inquired about credit union development districts that may be approved by the Commission and expressed the hope that these amendments would streamline the process for including a district in a credit union's field of membership. He also commented that several of the comment letters refer to the NCUA's current proposal to amend its field of membership rule and questioned the timeframe for its possible adoption. Mr. Feeney suggested that his preference would never be to wait for the federal government to take action. He further explained that NCUA's field of membership proposal has generating considerable interest (more than 11,000 written comments) and it will probably take NCUA a number of months to sort through and appropriately respond to the issues raised by the commenters.

Mr. Tuma moved to recommend that the Commission withdraw the proposed amendments to **7 TAC Sections 91.101 and 91.301** that were previously published in the *Texas Register*. Mrs. Stewart seconded the motion and the motion passed unanimously.

Mr. Gilman moved to recommend that the Commission approve for publication and comment the new proposed amendments to **7 TAC Section 91.301** concerning field of membership. Mr. Tuma seconded the motion and the motion passed unanimously.

D. NEW BUSINESS

(a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Completed Rule Review of 7 TAC Section 91.302 (relating to Election or Other Membership Vote by Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting); 7 TAC 91.310 (relating to Annual Report to Membership); and 7 TAC Section 91.315 (relating to Members Access to Credit Union Documents). Commissioner

Feeney briefly explained that in accordance with the Commission's Rule Review Plan, staff has reviewed 7 TAC Part 6, Chapter 91, Subchapter C and is recommending that no changes be made to **7 TAC Sections 91.302, 91.310 and 91.315**. He further indicated that the Department received no written comments on these rules.

After a short discussion, Mr. Gilman moved to recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.302, 91.310, and 91.315** continue to exist and that the rules be readopted without change. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendment to 7 TAC Section 97.200 Concerning the Employee Training Program. Commissioner Feeney explained that during the 84th Legislative Session, HB 3337 established certain requirements for agency tuition reimbursement programs. He indicated that the amendments are being proposed to reflect the new statutory requirements.

After a brief discussion Mrs. Stewart moved to recommend that the Commission approve for publication and comment the proposed amendment to **7 TAC Section 97.200** to be published in the *Texas Register*. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(c) Discussion of the Joint Financial Regulatory Agencies Mandatory Rule Review of 7 TAC, Part 8, Chapters 151 (relating to Home Equity Lending Procedures), Comprised of §§151.1-151.8, Chapter 152 (related to Repair, Renovation, and New Construction on Homestead Property), Comprised of

§§152.1, 152.3, 152.5, 9152.7, 152.9, 152.11, 152.13, and 152.15, and Chapter 153 (relating to Home Equity Lending) Comprised of §§153.1-153.5, 153.7-153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84-153.88, and 153.91-153.96. Commissioner Feeney noted that as provided in Section 15.413, Finance Code, home equity interpretations issued by the Commission are subject to Chapter 2001 of the Government Code. The current home equity interpretations were last reviewed in 2013 and, as a result, notice of intent to review **Chapters 151, 152, and 153** has been published in the *Texas Register* and comments will be accepted until March 28. No formal action was taken by the Commission.

(d) Discussion of the Recent Amendments to 12 CFR Part 723 and the Subsequent Implications for 7 TAC Section 91.709. Commissioner Feeney reported that NCUA had recently approved its final MBL/Commercial Lending rule (Part 723), to be effective on January 1, 2017. He explained that the final rule modernizes the regulatory requirements that govern credit union business lending activities by replacing the current rule's prescriptive requirements with a principles-based regulatory approach. The final rule also grandfathered state specific rules, including **7 TAC Section 91.709**. He noted that the Department may continue to administer the Commission's Rule in its current format, and federally-insured state chartered credit unions in Texas will continue to be exempt from Part 723. Any amendments or modifications to Rule 91.709, however, must be consistent with the final NCUA rule and approved by the NCUA Board. No formal action was taken by the Commission.

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

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 1:38 p.m.

Vik Vad
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.

2. The proposed rule is presented to the commission for consideration.

3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.

4. The proposed rule is adjusted by staff (if required), furnished to legal counsel, and transmitted to the ***Texas Register*** for publication as a "proposed" rule.

5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.

6. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.

7. The rule is adopted as "final" and transmitted to the ***Texas Register*** for publication as a final rule. The rule becomes effective 20 days following filing for publication.

8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

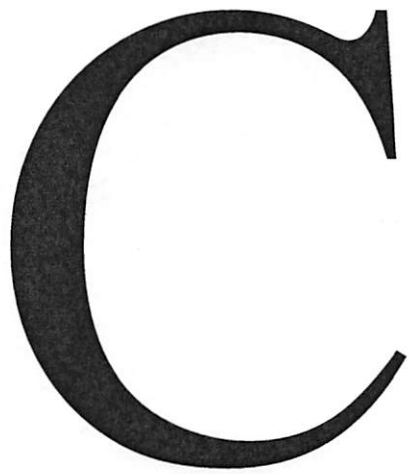
Rules, which are approved by the commission for emergency adoption, are transmitted to the ***Texas Register*** for filing. These rules become effective immediately upon filing unless another effective date is specified. They can be effective only for 120 days with a renewal provision for an additional 60 days -- a maximum of 180 days. "Day one" is the day of filing or the date specified as the effective date. While these emergency rules are in effect, regular rules should be initiated using the normal procedure described above. The Department rarely adopts emergency rules.

PROCEDURES FOR REQUIRED RULE REVIEW

Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. To comply with this requirement, the Commission follows the procedure below:

1. Every four years, the Commission adopts and publishes a Rule Review Plan, which establishes a date for the required review of each existing rule.
2. At least sixty days prior to a particular rule's scheduled review date, the Department publishes notice in the Newsletter reminding interested persons of the review and encouraging comments on the rules up for review.
3. Staff reviews each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule's structure as well as the specific language used is both clear and understandable.
4. If in reviewing existing rules, staff believes certain amendments may be appropriate, proposed amendments are prepared by staff and presented to the Rules Committee for review.
5. At a public meeting, the Rules Committee accepts public testimony on each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
6. The Committee's recommendation is presented to the Commission for consideration.
7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission approves the proposal for publication, it is transmitted to the ***Texas Register*** for publication as a "proposed" rule amendment.
9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
10. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in re-publication of the proposal.

11. The rule as amended is adopted and transmitted to the ***Texas Register*** for publication as a final rule. The rule becomes effective 20 days following filing for publication.
12. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.



UNFINISHED BUSINESS

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

a. The Adoption to **7 TAC Section 91.301** Concerning Field of Membership.

b. The Adoption to **7 TAC Section 97.200** Concerning the Employee Training Program.

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

FIELD OF MEMBERSHIP

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

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.301.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to adopt the proposed amendments to 7 **TAC Section 91.301** as previously published in the *Texas Register*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§91.301. Field of Membership.

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

(1) a majority of the persons in the Group live, work, or gather regularly within the local service area;

(2) the Group's headquarters is located within the local service area; or

(3) the persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area.

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

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

(1) members of the family or household of a member of the Group;

(2) volunteers performing services for or on behalf of the Group;

(3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;

(4) spouses of persons who died while in the Group;

(5) employees of the credit union;

(6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.

(c) Multiple-groups.

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

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

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

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

(d) Overlap protection.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Underserved communities.

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

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

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

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

(f) Parity with Federal Credit Unions.

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

(g) Application.

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

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

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

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

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

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

TexasBankers Association
One Industry. One Vision. One Voice.

April 11, 2016

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

Re: Proposed amendments to 7 TAC §91.301

Dear Ms. Shivers:

Thank you for the opportunity to submit comments on the Credit Union Department's (Department) proposal that would expand the field of membership requirements for state chartered credit unions. On behalf of the close to 500 members of the Texas Bankers Association, this letter serves as our formal opposition to this proposal.

The proposed changes to §91.301(a) seek to expand the field of membership local service area to consist of one or more contiguous political subdivisions. Based on the minutes from recent Credit Union Commission meetings, there seems to be no empirical evidence supporting the need for this change. In fact, the minutes from both the October 15, 2015 and March 3, 2016 Rules Committee meetings simply include a statement by Commissioner Feeney that changes to §91.301 are needed to "fulfill both the public policy considerations and modernize the field of membership rule."

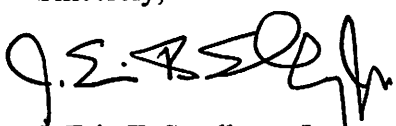
The broad definition of "political subdivision" gives our members cause for concern as it relates to using one or more contiguous political subdivisions as a basis for determining a credit union's field of membership. The Local Government Code's inclusion of counties, municipalities, special districts, school districts, junior college districts, housing authorities, or other political subdivisions of this state is troubling enough; stretching this even further to include the political subdivisions of *any other state* (emphasis added) leaves bankers to wonder if there are any limits to who state and federal regulators will deem to be within credit unions' fields of membership. We think not. Additionally, it is not without irony that we note this expansion of the field of membership area for Texas chartered credit unions is essentially drawn along taxing districts' boundaries.

We find the proposed amendments to §91.301(e) to be especially questionable. Having worked on Representative Johnson's 84R HB 1626, and its predecessor legislation in prior legislative sessions, the notion that this bill requires the Credit Union Department to expand its definition of

"underserved communities" in order to comply with the law is simply false. The law does require the Finance Commission and Credit Union Commissions to administer and monitor a banking development district program to encourage the establishment of branches of financial institutions in geographic areas where there is a demonstrated need for financial services. However, based on the minutes from the March 3, 2016 Rules Committee meeting, Commissioner Feeney seems to be stating that the expansion of §91.301(e)(1) is needed to "fully implement the intent of HB 1626". Because the Texas Administrative Code already clearly defines what "underserved communities" are, we are hard-pressed to understand why this section of the Texas Administrative Code needs to be amended to include underserved areas. The circuitousness of this argument is troubling to say the least. It seems abundantly clear to the Texas banking industry that if communities are underserved as "underserved communities" as defined in the Texas Administrative Code today, those areas have a "demonstrated need for financial services", thus there is no need for a change to this particular regulation. The fact that neither the Commission nor the Commissioner has offered a justification for this proposed change, other than HB 1626 requires it, which again it does not, is troubling. We believe further explanation is needed on this item before any action is taken.

I would be more than happy to discuss these concerns with you should you like any additional information.

Sincerely,



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

Isabel Velasquez

From: Harold Feeney
Sent: Monday, April 18, 2016 6:14 AM
To: Shari Shivers; Isabel Velasquez
Subject: FW: Proposed Field of Membership rule

From: Jeff Huffman [redacted]
Sent: Saturday, April 16, 2016 6:05 PM
To: Harold Feeney <Harold.Feeney@cud.texas.gov>; Shari Shivers <Shari.Shivers@cud.texas.gov>
Subject: Proposed Field of Membership rule

Commissioner Feeney:

The Texas Credit Union Association applauds the work of the Credit Union Department to update and modernize the field of membership regulation. The proposed changes are reasonable enhancements to the rule which should help to maintain the state credit union charter as a competitive viable option for credit unions to be able to serve their members and provide services to those who may not have access to a credit union. Further, it was important to update the regulation to implement legislation passed recently by the Legislature that allows creation of credit union development districts, which provides for greater access to credit unions by the people of Texas. We have no suggested changes to the rule as proposed.

Respectfully yours,

Jeff Huffman
President
Texas Credit Union Association
1122 Colorado Street, Suite 1307
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April 18, 2016

RECEIVED
CREDIT UNION
DEPARTMENT

2016 APR 21 PM 2:00

Submitted via mail and email at cudmail@cud.texas.gov

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

RE: Proposed Amendments to 7 Texas Administrative Code §91.301

Dear Ms. Shivers

These comments are submitted on behalf of the Independent Bankers Association of Texas (IBAT), a trade association representing approximately 400 independent community banks domiciled in Texas.

Under the proposed rule, a local service area would generally consist of one or more contiguous political subdivisions, as defined by TEX. LOCAL GOV'T CODE §172.003(3), that are within a reasonable proximity of a credit union's offices. When considering certain types of political subdivision (e.g. school districts and counties), the qualifying phrase "one or more contiguous political subdivisions" could include every political subdivision of that type. The legal definition of contiguous simply means that they are touching or connected throughout an unbroken sequence. All Texas counties and all Texas school districts are presumably connected or touching in an unbroken sequence with all other political subdivisions of the same type. One or more contiguous counties can mean one county, two counties, or up to all counties in Texas.

It is true that, under the proposal, the political subdivisions would have to be "within a reasonable proximity of a credit union's offices," but because there is no definition of that phrase, we can't determine if the limit is in fact reasonable. Presumably, whether a local service area is within a reasonable proximity of the credit union's office would be left to the Credit Union Commissioner or the Credit Union Department. However, regardless of how the Department or Commissioner might define it, as proposed, a credit union would merely need to open an office within a "reasonable proximity" of every county or school district, and its "local service area" would then be the entire state.

We oppose this broad expansion of the credit union field of membership because it has no apparent connection to HB 1626, 84th Session, and undermines the common bond requirement.

Thank you for this opportunity to comment.

Sincerely,

Christopher L. Williston

Christopher L. Williston, CAE
President and CEO

April 15, 2016

Neighborhood™ CREDIT UNION

RECEIVED
CREDIT UNION
DEPARTMENT

2016 APR 18 PM 1:12

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

RE: Revised Proposed Changes to 91.301, Field of Membership (FOM) Rules

Dear Ms. Shivers:

Neighborhood Credit Union appreciates the opportunity to provide additional comments to the Credit Union Department on the revised proposed changes to 91.301, FOM Rules. You may recall that we submitted comments to the original proposal in November 2015. We now serve members across several counties in the Dallas-Fort Worth area as well as Midland, Texas.

The revisions to the original proposed field of membership (FOM) changes using the approach of geographic expansions through political subdivisions allows for greater flexibility. However, because of the plurality of various political subdivisions in any respective state, this approach could also add a level of complexity in actual practice. The requirement that one or more political subdivisions be contiguous may alleviate it. If an entire state is eligible for a geographic expansion, that would certainly address it.

As I mentioned previously, we support the proposal for the most part. However, we are disappointed to see that there still is not a provision for the "digital branch" as outlined in the comments from November. We strongly feel that this is something that must be addressed to truly modernize our FOM rules. Texans should be allowed the opportunity to join a credit union that can serve them digitally whether or not a physical branch exists locally. Our specific concerns are again outlined as follows.

1) The approach of defining a deposit taking ATM as an office location is a step in the right direction but it still fails to recognize the way that business is done today through online and mobile channels. A credit union can serve a market area without a physical branch or even a deposit-taking ATM located in that area. A robust and properly built digital banking suite of services can serve members statewide and even nationwide. There are credit unions, such as Alliant Credit Union chartered in the state of Illinois, which serve prospective members nationwide without a physical branch location.

P.O. Box 803476
Dallas, Texas 75380-3476
214.748.9393 • 800.321.3728
myncu.com

We propose adding "digital branch" as a definition of an office location. The "digital branch" would include sufficient account and loan opening platforms, mobile deposit, person-to-person (P2P) transfer payments, account inquiries and transfers, live chat, secure email capabilities, a call center for support and an ATM network. Membership in a comprehensive network is often a feature of a digital branch and can more than substitute for a deposit taking ATM.

2) The political subdivisions should include the State of Texas as a geographic area. I did not observe a specific exclusion as was included in the original proposal. We believe it should be clearly spelled out that the entire state, which is a collection of political subdivisions, is an eligible geographic area. If a credit union can demonstrate that it can serve the entire state, there should be the ability to have it designated as a market area and as an FOM. As mentioned previously, Alliant Credit Union serves members statewide and nationwide.

To conclude, we believe these changes will allow for more expansions and more access for Texans to become members of credit unions. Ultimately, these changes should pave an avenue for Texas credit unions to increase overall market share among other financial institutions. This will enhance brand awareness and raise the credit union profile across the state.

We thank you for the opportunity to express our views once again on this FOM proposal. If you have any questions about our comments or need further information, please do not hesitate to contact me at 214.748.9393 Ext. 1260 or cjordan@myncu.com.

Sincerely,

Carolyn Jordan

Carolyn Jordan
Senior Vice President

P.O. Box 803476
Dallas, Texas 75380-3476
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myncu.com

EMPLOYEE TRAINING PROGRAM

C. (b) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 97.200 Concerning the Employee Training Program.

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 97.200.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 97.200** as previously published in the *Texas Register*.

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

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

The Commission received no comments regarding the proposed amendments.

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

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

§97.200. Employee Training Program.

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

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

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

(3) Seminars and conferences; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D

NEW BUSINESS

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

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

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

c. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.709 Concerning Member Business Loans.

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

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

f. Discussion of and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt the Fiscal Year 2017-2020 Rule Review Plan as Required by Section 2001.039, Government Code.

g. Establish Date for Next Committee Meeting (November 3, 2016 at 1:00 p.m.)

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

MANDATORY RULE REVIEW

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

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission readopt the noted rules.

RECOMMENDED MOTION: I move that we recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.7000** continue to exist and that the rule be readopted without change.

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

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

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

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

Subchapter P. Other Forms of Equity Capital

§91.7000. Certificates of Indebtedness.

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

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

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

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

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

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

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

(B) Clearly state that the certificate –

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

(ii) Is totally unsecured; and

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

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

(D) Shall contain the following statement:

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

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

(2) Limitations as to term and prepayment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Disclosures.

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

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

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

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

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

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

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

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

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

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

(2) Identify the area where certificate of indebtedness activities occur; and

(3) Clearly delineate and distinguish those areas from the areas where the credit union's share- and deposit-taking activities occur.

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

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

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

(o) Prohibited practices.

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

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

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

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

(2) No credit union shall directly or indirectly:

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

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

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

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

MANDATORY RULE REVIEW

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

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission readopt the noted rules.

RECOMMENDED MOTION: I move that we recommend that the Commission find that the reasons for adopting **7 TAC Sections 91.8000** continue to exist and that the rule be readopted without change.

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

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

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

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

Subchapter Q. Access to Confidential Information

§91.8000. Discovery of Confidential Information.

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

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

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

(1) notify the department of the request;

(2) provide the department with a copy of the discovery documentation and, if requested by the department, a copy of the requested information; and

(3) move for a protective order, or its equivalent under applicable rules of procedure.

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

(A) the party seeking the information has a substantial need for the information;

(B) the information is directly relevant to the legal dispute in issue; and

(C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MEMBER BUSINESS LOANS

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

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

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

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to approve for publication and comment the proposed amendments to **7 TAC Section 91.709** concerning member business loans.

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

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

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

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

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

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

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

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

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

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

The amendments are proposed under the provision of the Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and Texas Finance Code Section 123.003, which authorizes the Commission, in conjunction with the exercise of its specific rulemaking authority, to adopt rules reflecting the statutory right of a state credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

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

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

§91.709. Member Business and Commercial Loans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Commercial Loan Risk Management Systems.

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

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

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

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

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

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

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

(e) Collateral and Security for Commercial Loans.

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

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

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

(f) Construction and Development Loans.

(1) Terms. In this subsection:

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

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

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

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

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

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

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

(g) Commercial Loan Prohibitions.

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

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

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

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

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

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

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

(h) Aggregate Member Business Loan Limit.

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

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

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

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

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

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

(i) Aggregation and Attribution for Commercial Loans.

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

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

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

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

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

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

(3) Common Enterprise.

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

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

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

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

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

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

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

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

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

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

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

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

(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 §121.003.

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

(m) Transitional Provisions.

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

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

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

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

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

~~(3) A loan to another credit union or a credit union service organization;~~

(4) Loan(s) otherwise meeting the definition of a member business loan made to a member or associated member that, in the aggregate, is $50,000 or less; or
(5) A loan where a federal or state agency or one of its political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.
(b) A credit union with a net worth ratio greater than 6% may make member business loans subject to the conditions of this section. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.
(c) Any interest a credit union obtains in a loan that was made by another lender to the credit union's member is a member business loan, for purposes of this rule, to the same extent as if made directly by the credit union to its member.
(d) If a credit union holds any nonmember loan participation investments that would constitute a member business loan if made to a member, those investments will affect the aggregate limit on a credit union's net member business loan balances as follows:
(1) The total of the credit union's net member business loan balances and the nonmember participation investments must not exceed the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets, unless the credit union has first received approval from the commissioner.
(2) To request approval from the commissioner, a credit union must submit a letter application that:
(A) includes a current copy of the credit union's member business loan policies;
(B) confirms that the credit union is in compliance with all other aspects of this rule;
(C) states the credit union's proposed limit on the total amount of nonmember loan participation investments that the credit union may acquire if the application is granted; and
(D) attests that the acquisition of nonmember loan participation investments is not being used, in conjunction with one or more other credit unions, to have the effect of trading member business loans that would otherwise exceed the aggregate limit.
(3) The commissioner shall deny a request to exceed the aggregate limit on member business loans, or may revoke a previously approved increased aggregate limit, if the commissioner determines that:
(A) the treatment of loan purchases or participation interest will or has resulted in circumvention of the aggregate limit;
(B) the credit union's level of capital is not commensurate with that needed to support the additional risks that will be or has been incurred; or
(C) the performance of the activity by the credit union will or has adversely affected the safety and soundness of the credit union.
(e) The aggregate amount of net member business loan balances any one member or group of associated members shall not be more than 15% of the credit union's net worth (less the Allowance for Loan Losses account) or $100,000.00, whichever is higher. If any portion of a member business loan is secured by shares in the credit union or deposits in another financial institution, or is fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 15% limit.
(f) All member business loans must be secured by collateral in accordance with this section, except the following:

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

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

HOME EQUITY RULE REVIEW

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

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

RECOMMENDED ACTION: The Department request that the Commission approve and adopt the rule review of Chapters 151, 152, and 153 as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting Chapters 151, 152, and 153 continue to exist and that the Commission re-propose and readopt the rules.

Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 151. Home Equity Lending Procedures
Chapter 152. Repair, Renovation, and New Construction on Homestead Property
Chapter 153. Home Equity Lending

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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March 21, 2016

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

Dear Ms. Hobbs:

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

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

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

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

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

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

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

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

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

We recommend these revisions to clarify the following:

1. The equity loan lender and subsequent lenders may refinance the loan without having to comply with the requirements and conditions of Section 50(a)(6).

2. The loan may be assumed without continuing its equity loan character.

3. A new equity loan may be made and secured by the property before the first anniversary of the closing date of the loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "For married owners, only the spouse who will sign the debt instrument (*e.g.*, a promissory note) of the equity loan agreement is 'the owner' for purposes of Section 50(g)."

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

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

/s/*David F. Dulock*

David F. Dulock
For the Firm

HOME EQUITY LENDING RULE REVIEW

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

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

RECOMMENDED ACTION: The Department, requests that the Committee recommend that the Commission approve the proposal 7 TAC, Part 8, Chapter 153 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to approve for publication and comment the proposed amendments to 7 TAC, Part 8, Chapter 153.

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

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

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

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

The agencies prepared an initial draft of amendments with technical corrections and updates to Chapter 153. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies received written precomments from several stakeholders. The agencies have incorporated suggestions offered by stakeholders into the proposed amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting proposal.

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

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

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

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

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

In the comment on the notice of intention to review, the commenter recommends replacing the reference to the HUD-1 form in §153.13(3) with a reference to the CFPB's closing disclosure. Based on this recommendation and the federal rules discussed above, the proposed amendments to §153.13(3) delete the reference to the HUD-1 form, and add new references to the disclosures currently required under Regulation Z: the closing disclosure (for closed-end equity loans) and the account-opening disclosures (for home equity lines of credit). When these disclosures are properly completed, they provide borrowers with a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing, in accordance with Section 50(a)(6)(M)(ii).

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

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

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

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

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

Proposed new §153.17(4) replaces current paragraphs (3) and (4), and explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution. Current §153.17(3) explains that a nondepository lender must hold a license under Chapter 342 to make, transact, or negotiate a secondary mortgage loan. Current §153.17(4) explains that if a person does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to be authorized to make home equity loans. In 2007, Texas Finance Code, §342.051 was amended to include an exemption for a person licensed under Chapter 156. In a precomment, one stakeholder recommends deleting current paragraph (3), because the paragraph does not acknowledge the exemption for Chapter 156 licensees, and because current paragraph (1) already explains that lenders must comply with statutory licensing requirements. In response to this precomment, the proposal replaces paragraphs (3) and (4) with a new paragraph (4). The new paragraph explains that a Chapter 342 licensee is a regulated lender for purposes of the constitution, and that if a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), the person must obtain a Chapter 342 license to be authorized to make home equity loans.

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

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the amendments will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

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

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

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

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

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

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

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

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

(A) (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

Certification

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

Issued in Austin, Texas on July 8, 2016.

Harold Feeney
Credit Union Commissioner
Joint Financial Regulatory Agencies

FY 2017-2020 RULE REVIEW PLAN

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

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

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

RECOMMENDED ACTION: The Department requests the Committee recommend that the Commission adopt the proposed 2017-2020 Rule Review Plan.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to adopt the proposed 2017-2020 Rule Review Plan.

Rule Review Plan

FY 2017-2020

Chapters and Subchapters to be Reviewed	Date of Review by Commission & Potential Changes Published for Comment	Date the Commission May Consider Potential Changes for Adoption
Section I	**March 2017**	**July 2017**
Title 7, Part 6, Chapter 97		
• Subchapter A – General Provisions		
• Subchapter B – Fees		
• Subchapter C – Department Operations		
• Subchapter D – Gifts & Bequests		
• Subchapter E – Advisory Committees		
Section II	**July 2017**	**November 2017**
Title 7, Part 6, Chapter 91		
• Subchapter A – General Rules		
• Subchapter B – Organization Procedures		
• Subchapter J – Changes in Corporate Status		
• Subchapter L – Submission of Comments by Interested Parties		
Section III	**November 2017**	**March 2018**
Title 7, Part 6, Chapter 91		
• Subchapter D – Powers of Credit Unions		
• Subchapter M – Electronic Operations		
• Subchapter N – Emergency or Permanent Closing of Office or Operation		
Section IV	**March 2018**	**July 2018**
Title 7, Part 6, Chapter 93		
• Subchapter A – Common Terms		
• Subchapter B – General Rules		
• Subchapter C – Appeals of Preliminary Determination on Applications		
• Subchapter D – Appeals of Cease & Desist Orders and Orders of Removal		
• Subchapter E – Appeals of Orders of Conservation		
• Subchapter F – Appeal of Commissioner's Final Determination to the Commission		

Chapters and Subchapters to be Reviewed	Date of Review by Commission & Potential Changes Published for Comment	Date the Commission May Consider Potential Changes for Adoption
Section V	**July 2018**	**November 2018**
Title 7, Part 6, Chapter 91		
• Subchapter G – Lending Powers		
Section VI	**November 2018**	**March 2019**
Title 7, Part 6, Chapter 95		
• Subchapter A – Insurance Requirements		
• Subchapter B – Liquidating Agents		
• Subchapter C – Guaranty Credit Union		
• Subchapter D – Disclosure for Non-Federally Insured Credit Unions		
Section VII	**March 2019**	**July 2019**
Title 7, Part 6, Chapter 91		
• Subchapter E – Direction of Affairs		
• Subchapter F – Accounts and Services		
Section VIII	**July 2019**	**November 2019**
Title 7, Part 6, Chapter 91		
• Subchapter H – Investments		
• Subchapter I – Reserves & Dividends		
Section IX	**November 2019**	**March 2020**
Title 7, Part 6, Chapter 91		
• Subchapter O – Trust Powers		
• Subchapter K – Residential Mortgage Loan Originators Employed by a CUSO		
Section X	**March 2020**	**July 2020**
Title 7, Part 6, Chapter 91		
• Subchapter C - Members		
Section XI	**July 2020**	**November 2020**
Title 7, Part 6, Chapter 91		
• Subchapter P – Other Forms of Equity Capital		
• Subchapter Q – Access to Confidential Information		
Title 7, Part 8, Chapter 151		
Title 7, Part 8, Chapter 152		
Title 7, Part 8, Chapter 153		

NEXT MEETING AND ADJOURNMENT

D. (g) Discussion of and Vote to Establish Date for Next Committee Meeting.

BACKGROUND: If necessary, the next regular meeting of the Committee will be scheduled for November 3, 2016, at 1:00 p.m. in Austin.

ADJOURNMENT