

Information for New Charter Applications

Definition of Credit Union

Section 121.002(2) of the Texas Finance Code defines a credit union as follows:

A voluntary, cooperative, nonprofit financial institution authorized to do business in this State for the purposes of:

- 1. encouraging thrift among its members;*
- 2. creating a source of credit at fair and reasonable interest rates;*
- 3. developing and providing to its members alternative methods of financing their purchases at reasonable costs;*
- 4. providing an opportunity for its members to use and control their money to improve their economic and social condition; and*
- 5. conducting any other business, engaging in any other activity, or providing any other service that may benefit its members.*

Dual Chartering System and Oversight

Credit unions can choose to be state or federally chartered. State-chartered credit unions in Texas are regulated by the Credit Union Department (Department). Federally chartered credit unions are regulated by the National Credit Union Administration (NCUA). The NCUA is the chartering agency for federal credit unions and is responsible for managing the National Credit Union Share Insurance Fund (NCUSIF).

The Department's mission is to safeguard the public interest, protect the interests of credit union members, and promote public confidence in credit unions. Once the Department issues a certificate of incorporation, it will examine the credit union regularly to ensure that the credit union is operated in a safe and sound manner in compliance with applicable laws.

Application to Incorporate

State-chartered credit unions are authorized by Texas law under the Finance Code, Subtitle D, Title 3, known as the Texas Credit Union Act. Chapter 122 of the Finance Code contains the organizational and financial requirements for beginning a credit union.

Section 122.001 of the Finance Code provides that seven or more people, the majority of which reside in Texas, may apply to the Department for permission to organize a credit union. Credit union organizers should be able to demonstrate to the Department that the establishment of the credit union is economically feasible, the proposed credit union membership meets all statutory and regulatory requirements, and the credit union operations will be in compliance with applicable state and federal laws.

The application to incorporate can be found on the Department's website at www.cud.texas.gov under Department Forms.

Articles of Incorporation and Bylaws

Organizers must adopt articles of incorporation and bylaws. As required by Section 122.002 of the Finance Code, the Credit Union Commission has adopted standard articles of incorporation and bylaws which must be used by all newly organized credit unions.

Field of Membership

Credit unions may serve only their members. Section 122.051 of the Finance Code limits membership in a credit union to persons having a community of interest based on occupation, association, or residence. A person is admitted as a member if he or she meets the eligibility requirements of the credit union's field of membership. In a credit union, the bylaws adopted by the board of directors define the credit union's field of membership. The Credit Union Commission has adopted rules defining "community of interest" and setting forth field of membership standards. These rules are found in the Texas Administrative Code (TAC) Sections 91.101 and 91.301.

The application must describe the proposed field of membership and provide information about the number of potential members. Potential membership information may be obtained from the sponsoring employer group(s), sponsoring organization(s), sponsoring association group(s), or the local Chamber of Commerce.

Deposit Insurance

All state-chartered credit unions are required to have share insurance. Most Texas chartered credit unions have federal share insurance from the NCUSIF. The regulations that spell out the requirements for this insurance are in Part 741 of NCUA Rules and Regulations. For more information on NCUSIF, check NCUA's website, www.ncua.gov or write or call the following:

National Credit Union Administration, Region IV
4807 Spicewood Springs Road, Suite 5200
Austin, Texas 78759-8490 (512) 342-5600

General Duties of Officers and Directors

In general, directors and officers of credit unions have the same duties and obligations as those in similar positions in other financial institutions. Under Section 122.053(c) of the Finance Code, a director must take and subscribe to an oath or affirmation concerning the performance of the director's duties to the credit union. Section 122.054 of the Finance Code and 7 TAC Section 91.501 contain additional qualifications for directors.

Business Plan and Economic Feasibility

To demonstrate the economic feasibility of the proposed credit union, the incorporators must prepare a detailed business plan as described in 7 TAC Section 91.201. Incorporators must be prepared to show quarterly pro forma financial information for the first three years of operation.

The business plan should also demonstrate that the organizers, the proposed board of directors, and the managing officer understand the critical issues that will affect whether the credit union will be operated successfully. This plan should include any assumptions, surveys, or other supporting data that was used to prepare the business plan. See 7 TAC Section 91.201(b) for specific requirements for the business plan.

Bond and Insurance Coverage

All credit unions are required to have bond coverage on their directors, committee members, and employees of the credit union. See Section 122.063 of the Finance Code and 7 TAC Section 91.510. The commissioner's approval will require the credit union to provide evidence of bond coverage before it can open for business.

Credit unions should also be insured for losses caused by persons outside of the credit union (losses due to, for example, theft, holdup, or vandalism.) The bond and insurance coverage should be from a company authorized to do business in the State of Texas. Check with your insurance agent or legal counsel for potential bond and insurance companies to contact.

Further Resources

It has been our experience that credit union organizers, the proposed credit union board of directors, and proposed president can greatly benefit from contact with successful credit union leaders. We encourage you to contact one or more credit unions in your area for assistance during the planning stage.

In addition, you may wish to contact the Cornerstone Credit Union League. The League is an organization of Arkansas, Oklahoma, and Texas state and federal credit unions. It provides a variety of helpful services to its member credit unions. The League may have educational and promotional material that can assist you as organizers. To contact the League:

Cornerstone Credit Union League
4455 LBJ Freeway, Suite 1100
Dallas, Texas 75244
800-442-5762
www.cornerstoneleague.coop

Applicant Responsibility

Each applicant must:

1. Submit all information required by Section 122.001(c) of the Finance Code, and by this Department.
2. Provide a response to each question or request for information. If appropriate, an answer of "not applicable" or "none" should be provided.
3. Determine compliance with all applicable statutes and rules.
4. Appoint a contact person to serve as its primary liaison.

Acknowledgment of Receipt

Within 30 days of receiving it, the Department will acknowledge the application and provide the applicant with an estimated time frame for processing the application. Normally, a decision on the application will be made no later than the 60th day after the date the required notice is published in the *Texas Register* and the Department Newsletter.

Publication and Protest Procedures

When the application is complete, the Department will publish notice of the application in the *Texas Register* and the Department Newsletter as required by law and rule. Any interested parties that support or oppose a proposed application may file written comments within 30 days of the date that the notice is published in either the *Texas Register* or Department Newsletter, whichever is later. Written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. Notice must be published in both publications at least 30 days before the Department can act on the request.

In general, the Department relies on written information submitted during the comment period to reach a decision on an application. On request, however, the Department will hold a public or private meeting to obtain additional information.

Additional Information

At any time during the application processing, the Department may ask for additional information. Failure to provide the information by the deadline given could result in a delayed, conditionally approved, denied, or technically withdrawn application.

Changes, Misrepresentations, or Omissions

Applicants must notify the Department of any significant changes to the application, whether it occurs prior to the Department's preliminary decision or after. If the Department discovers a material misrepresentation or omission after approving the application, it may nullify its decision.

Approvals

The Department may approve or conditionally approve any application after reviewing the application and considering the relevant factors. The Department may impose conditions if it determines that they are necessary to ensure that approval is consistent with applicable statutes, rules, and Department policies.

Denial

The Department may deny an application if:

- The commissioner is not satisfied that the proposed credit union is economically feasible.
- The character and general fitness of the organizers and the members of the initial board warrant the belief that the credit union's business and affairs will not be properly administered in accordance with applicable law and rules.
- The character and size of the field of membership to be served by the credit union does not conform to applicable law and rules.
- The organizers and the members of the initial board are not acting in good faith and are not making the application in accordance with the purposes of the Credit Union Act.
- The credit unions do not furnish to the Department all information requested by the Department that is material to the application.
- Approval would be inconsistent with applicable law, rule, or Department policy.

Contested Case

If, after notification of the Department's decision on an application, the applicant requests a hearing, it will be conducted by the State Office of Administrative Hearings pursuant to the Administrative Procedures Act and Commission Rules (7 TAC Chapter 93). Following the hearing, the Administrative Law Judge will review the evidence and testimony, and prepare a Proposal for Decision (PFD) and proposed final order for the commissioner. The commissioner may:

1. Adopt the PFD and proposed final order in whole or in part;
2. Modify and adopt the PFD and proposed final order in whole or in part;
3. Decline to adopt the PFD and proposed final order in whole or in part;
4. Remand for further proceedings by the Administrative Law Judge; or
5. Take another lawful and appropriate action with regard to the case.

The commissioner must make a final determination within 30 days of the date of receipt of the PFD and proposed final order.

Appeals

Under Section 122.007 of the Finance Code, and 7 TAC Chapter 93, Subchapter C, an incorporator or other aggrieved person may appeal the commissioner's final order to the Commission no later than 60 days from the date of the order. The appeal must state the identities and interest of the parties, the particular matters complained of, any specific objections, and the actions sought from the Commission.

Decisions by the Commission

The Commission may consider any aspect of the case whether or not included in the motion for appeal. Decisions by the Commission must be based solely on the hearing record. The Commission may, in its discretion allow oral arguments. A person who is aggrieved by the Commission's decision may seek judicial review of the decision.

Notice of Decisions

The Department will cause notice of the final decision to be published in the *Texas Register* and the Department Newsletter as required by law and rule.