



CREDIT UNION DEPARTMENT

DATE: September 6, 2017

TO: State Chartered Credit Unions

SUBJECT: Change 48 to Update the Texas Rules for Credit Unions

The attached pages constitute changes to the Texas Rules for Credit Unions. Your book of rules should be updated as follows:

REMOVE PAGES

Rules for CUs Cover

Index – pages i and ii

Index – pages vii and viii

91-1 thru 91-18

97-1 thru 97-4

N/A

INSERT

Rules for CUs Cover

Index – pages i and ii

Index – pages vii and viii

91-1 thru 91-18

97-1 thru 97-4

97-17 thru 97-18

AMENDMENTS OR NEW RULES

Updated Cover

Updated Index

Updated Index

Readopted Sections 91.101 – 91.125

Readopted Sections 91.201 – 91.210

Readopted Sections 91.1003 – 91.1008

Readopted Sections 91.3001 – 91.3002

Amended Section [97.105](#)

Rule 97.104 was Repealed and Replaced
with New Rules [97.500 and 97.501](#)

FOR YOUR RECORDS - Please keep this letter of transmittal behind the **Update Tab** of the Rules Section of your binder as a record to show your rules are up to date.



RULES FOR CREDIT UNIONS

adopted by the

CREDIT UNION COMMISSION

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The official copy of the Texas Administrative Code is maintained by the Secretary of State for the State of Texas and is available on their website at <http://sos.state.tx.us/tac/index.shtml>.

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CHAPTER 91

Subchapter A. General Rules

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Catastrophic act--any natural or man-made disaster such as a flood, tornado, earthquake, major fire or other disaster resulting in physical destruction or damage.

(8) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues,

(ii) whether the members participate in furtherance of the goals of the association,

(iii) whether the members have voting rights,

- (iv) whether there is a membership list,
- (v) whether the association sponsors activities,
- (vi) what the association's membership eligibility requirements are, and
- (vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who

- (i) live in,
- (ii) worship in,
- (iii) attend school in, or
- (iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(9) Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income-producing property or convert the use of income-producing property to a different or expanded use from its former use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income-producing property that do not change its use.

(10) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(11) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(12) Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(13) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(14) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(15) Improved residential property--real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

(16) Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

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

(18) Loan and extension of credit--a direct or indirect advance of funds to a member, or on that member's behalf, that is conditioned upon the repayment of the funds by the member or the application of collateral. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(19) Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

- (A) Buyer and seller are typically motivated;
- (B) Both parties are well informed or well advised, and acting in their own best interests;
- (C) A reasonable time is allowed for exposure in the open market;
- (D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U. S. Office of Management and Budget.

(22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's

Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) Principal office--the home office of a credit union.

(28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(29) Real estate or real property—an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(32) Resident of this state--a person physically located in, living in or employed in the state of Texas.

(33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(34) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(35) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code [(TAC)], Banking and Securities, which contains all of the department's rules.

(38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(39) Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(40) Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

Source: The provisions of this §91.101 adopted to be effective November 13, 2000, 25 TexReg 11277; amended to be effective January 7, 2004, 29 TexReg 81; amended to be effective November 14, 2004, 29 TexReg 10253; amended to be effective November 16, 2005, 30 TexReg 7432; reviewed and amended to be effective November 8, 2009, 34 TexReg 7620; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.103. Public Notice of Department Decisions.

The commissioner shall cause notice of final actions taken by the department on certain activities to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications within 30 days of the action becoming final. The activities covered by this requirement are:

- (1) an application for incorporation under Texas Finance Code §122.001;
- (2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;
- (3) a request for an amendment to a credit union's bylaws for the expansion of its field of membership under Texas Finance Code §122.011;
- (4) an application for merger or consolidation under Texas Finance Code §122.152;
- (5) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013; and
- (6) an application for conversion of a credit union's certificate of incorporation under Texas Finance Code §§122.201, 122.202, 122.203, or 91.1007 of this chapter (relating to conversion to a Mutual Savings Institution).

Source: The provisions of this §91.103 adopted to be effective May 10, 1998, 23 TexReg 4567; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; amended to be effective November 8, 2009, 34 TexReg 7623; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.104. Public Notice and Comment on Certain Applications.

(a) Upon receipt of a complete application for authorization to be granted by the department, the commissioner shall cause notice of such application to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications at least 30 days prior to taking action on the request. The activities covered by this requirement are:

- (1) an application for incorporation under Texas Finance Code §122.001;
- (2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;
- (3) a request for an amendment to a credit union's bylaws for an expansion of its field of membership under Texas Finance Code §122.011;
- (4) an application for merger or consolidation under Texas Finance Code §122.152;
- (5) an application for conversion of a credit union's certificate of incorporation under Section 91.1007 of this chapter (relating to conversion to a mutual savings institution); and
- (6) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013.

(b) The commissioner may waive or delay notice of applications under subsection (a) of this section when a waiver or delay is in the public interest. The commissioner shall consider the welfare and stability of the affected credit union(s) in determining the public interest. If the commissioner determines that delaying public notice is in the public interest, the notice of application shall be published in each publication at the earliest feasible time.

Source: The provisions on this §91.104 adopted to be effective May 11, 2000, 25 TexReg 3943; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7623; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.105. Acceptance of Other Application Forms.

Notwithstanding other requirements of this chapter, if another state or federal regulator's application and forms provide all the information required by Texas law, the commissioner may accept those forms. This does not limit the commissioner's power to require additional information necessary to complete an application or other form.

Source: The provisions on this §91.105 adopted to be effective May 11, 2000, 25 TexReg 3943; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.110. Protest Procedures for Applications.

A protestant to an application for authorization to be granted by the commissioner must file a written notice of protest, in such form as the commissioner may prescribe, within 30 days of the date that notice of the application is published in either the *Texas Register* or the department newsletter, whichever is later. The notice of protest must provide all information that the protestant wishes the commissioner to consider in evaluating the application.

Source: The provisions on this §91.110 adopted to be effective May 11, 2000, 25 TexReg 3943; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.115. Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.307, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For the purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

(c) Safety evaluations.

(1) The credit union owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually, unless the machine is exempted under the Finance Code §59.302.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The credit union owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the credit union owner or operator of the machine.

(d) Notice. A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller machine.

(1) Access devices. The notice shall be delivered personally or mailed to each member, whose mailing address is in this state, when an access device is issued, renewed or replaced.

(2) Content. The notice of basic safety precautions required by this section must be provided in written form which can be retained by the member and may include recommendations or advice regarding:

(A) security at walk-up or drive-up unmanned teller machines;

(B) protection of code or personal identification numbers;

(C) procedures for lost or stolen access devices;

(D) reaction to suspicious circumstances;

(E) safekeeping and disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(F) the inadvisability of surrendering information about the member's access device over the telephone;

(G) safeguarding and protecting the member's access device, such as a recommendation that the member treat the access device as if it was cash;

(H) protection against unmanned teller machine fraud, such as a recommendation that the member compare unmanned teller machine receipts against the member's monthly statement; and

(I) other recommendations that the credit union reasonably believes are appropriate to facilitate the security of its unmanned teller machine users.

(e) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If a credit union owner or operator of an unmanned teller machine on leased premises is unable to obtain

compliance with safety procedures from the landlord or owner of the property, the credit union shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

Source: The provisions on this §91.115 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and amended to be effective November 10, 2013, 38 TexReg 7704; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.120. Posting of Notice Regarding Certain Loan Agreements.

(a) As required by the Business and Commerce Code §26.02, all credit unions are required to conspicuously post notices informing members of the requirements that certain loan agreements must be in writing. The notice must include the language and be in the format prescribed by the Finance Commission of Texas in §3.34 of this title (relating to Posting of Notice in All Financial Institutions).

(b) Each credit union shall post the notice required by subsection (a) in the lobby of each of its offices other than off-premises electronic deposit facilities.

Source: The provisions on this §91.120 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.121. Complaint Notification.

(a) Definitions.

(1) “Privacy notice” means any notice which a credit union gives regarding a member’s right to privacy, as required by a state or federal law.

(2) For purposes of subsection (b) of this section and unless the context reads otherwise, “notice” means a complaint notification in the form set forth in subsection (b)(1) of this section.

(b) Required Notice.

(1) Credit unions must provide their members with the following notice describing the process for filing complaints:

“If you have a problem with the services provided by this credit union, please contact us at:

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address

compliance with safety procedures from the landlord or owner of the property, the credit union shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

Source: The provisions on this §91.115 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and amended to be effective November 10, 2013, 38 TexReg 7704; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

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(b) Each credit union shall post the notice required by subsection (a) in the lobby of each of its offices other than off-premises electronic deposit facilities.

Source: The provisions on this §91.120 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

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(1) “Privacy notice” means any notice which a credit union gives regarding a member’s right to privacy, as required by a state or federal law.

(2) For purposes of subsection (b) of this section and unless the context reads otherwise, “notice” means a complaint notification in the form set forth in subsection (b)(1) of this section.

(b) Required Notice.

(1) Credit unions must provide their members with the following notice describing the process for filing complaints:

“If you have a problem with the services provided by this credit union, please contact us at:

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address

The credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. If any dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department at 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Website: www.cud.texas.gov."

(2) The title of this notice shall be "**COMPLAINT NOTICE**" and must be in all capital letters and boldface type.

(3) The credit union must provide the notice as follows:

(A) In each office where a credit union typically conducts business on a face-to-face basis, the notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) If a credit union maintains a website, it must include the notice or a link to the notice in a reasonably conspicuous place on the website.

(C) If a credit union distributes a newsletter, it must include the notice on approximately the same date at least once during each calendar year in any newsletter distributed to its members.

(D) If a credit union does not have an Internet website or does not distribute a newsletter, the notice must be included with any privacy notice the credit union is required to give or send its members.

Source: The provisions on this §91.121 adopted to be effective March 4, 2009, 34 TexReg 1399; amended to be effective March 14, 2010, 35 TexReg 1977; amended to be effective November 13, 2011, 36 TexReg 7540; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.125. Accuracy of Advertising.

(a) As used in this rule, an advertisement is any informational communication, including oral, written, electronic, broadcast or any other type of communication, made to members, prospective members, or to the public at large in any manner designed to attract attention to the business of a credit union.

(b) No credit union shall disseminate or cause the dissemination of any advertisement that is in any way intentionally or negligently false, deceptive, or misleading. An advertisement shall be deemed by the Commissioner to be intentionally or negligently false, deceptive, or misleading if it:

- (1) contains materially false claims or misrepresentations of material facts;
- (2) contains materially implied false claims or implied misrepresentations of material fact;
- (3) omits material facts;
- (4) makes a representation likely to create an unjustified expectation about credit union products or services;
- (5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;
- (6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and

(7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

Source: The provisions on this §91.125 adopted to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

Subchapter B. Organization Procedures

§91.201. Incorporation Procedures.

- (a) An application to incorporate a credit union shall be in writing and supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of incorporation.
- (b) Business Plan. The application must include a business plan that covers three years and provides detailed explanations of actions that are proposed to accomplish the primary functions of the credit union. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will maintain adequate capital to support its operations. Specifically the plan must:
- (1) Describe the credit union's business, including the products, member services, and other activities;
 - (2) Provide quarterly pro forma financial information for the three years of operation, including annual totals for the Income Statement;
 - (3) Describe in detail all of the assumptions used to prepare the projected financial information;
 - (4) Discuss the capital goals and the means to achieve them;
 - (5) Discuss the overall marketing/advertising strategy to reach potential members;
 - (6) Discuss the credit union's strategy for obtaining required share and deposit insurance protection for its members' accounts; and
 - (7) Describe the economic forecast for the three years of the plan.
- (c) The commissioner shall determine whether or not an application is complete within thirty days of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.
- (d) Upon the determination that an application is complete, the commissioner shall make or cause to be made an investigation and examination of the facts concerning the applicant. It is essential that the investigation and examination confirm to the satisfaction of the commissioner that the proposed institution will have a reasonable opportunity to succeed.
- (e) Proposed credit unions must investigate the possibility of an overlap with existing state or federal credit unions doing business in this state prior to submitting an application. When an overlap situation does arise, officials of the involved entities must attempt to resolve the overlap issue. Typically, an overlap will not be considered adverse to the overlapped credit union if:
- (1) the group has fewer than 3000 primary potential members or the overlap is otherwise incidental in nature;
 - (2) the overlapped credit union does not object to the overlap;
 - (3) there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time; or
 - (4) a single occupational or associational based credit union overlaps a community chartered credit union.
- (f) When the applicant and a credit union agree and/or the commissioner has determined that overlap protection is appropriate, an exclusionary clause will be included in the proposed field of membership for a period of 24 months from the date the proposed credit union commences business. The commissioner, for good cause shown, may extend this period for an additional 24 months.

(g) The commissioner may approve the application conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been met within the time specified in the approval order or any extension as set forth in Finance Code §122.006.

Source: The provisions of this §91.201 adopted to be effective May 11, 2000, 25 TexReg 3945; adopted to be effective January 7, 2004, 29 TexReg 82; amended to be effective November 14, 2004, 29 TexReg 10253; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.202. Bylaw and Articles of Incorporation Amendments.

(a) The Standard Bylaws for State Chartered Credit Unions ("Standard Bylaws"), approved by the commission on February 20, 2004, or as subsequently revised or amended, constitute the bylaws which shall be used by credit union incorporators.

(b) The commissioner is expressly authorized to approve deviations from and amendments to the standard bylaws, unless the deviation or amendment violates applicable law.

(c) Credit unions desiring to amend articles of incorporation or bylaws must submit a written application, in such form as the commissioner may prescribe. The application shall include the text of the amendment, the date that the board of directors adopted the amendment, a brief statement explaining the purpose of the amendment, information regarding the financial impact on the credit union if the amendment is approved, and any other information the commissioner may require to make a decision on the amendment.

(d) The commissioner shall determine whether or not an application is complete within thirty day of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.

(e) The commissioner does not need to provide notice as prescribed in §91.103 (relating to Public Notice of Department Decisions and §91.104 (relating to Public Notice and Comment on Certain Applications) for applications that apply for standard optional field of membership provisions (1), (2), (3), and (4) as contained in the Standard Bylaws "Appendix A".

(f) A credit union's board of directors may amend its bylaws to adopt any standard bylaw without approval by the commissioner provided: (1) the wording of the amendment is identical to the Standard Bylaws; and (2) the credit union submits a completed, fully executed Certification of Resolution of Amendment to Credit Union Bylaws ("Certification") to the commissioner. The commissioner will promptly acknowledge receipt of the Certification. The amendment will be effective as of the date the commissioner acknowledges receipt of the Certification.

Source: The provisions of this §91.202 adopted to be effective May 11, 2000, 25 TexReg 3945; amended to be effective March 14, 2004, 29 TexReg 2305, amended to be effective November 16, 2005, 30 TexReg 7433; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42, TexReg 3807.

§91.203. Share and Deposit Insurance Requirements.

- (a) All credit unions in the State of Texas shall obtain share insurance protection as provided in Chapter 95 of this title (pertaining to Share and Depositor Insurance Protection).
- (b) With the approval of the commissioner, and if recognized by its insuring organization, a credit union may, from time to time as determined by its board of directors, issue uninsured membership shares which are subordinate to all other claims, including creditors, shareholders, and the insuring organization. The commissioner may approve the issuance of such accounts conditioned upon specific requirements being met.

Source: The provisions of this §91.203 adopted to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.205. Credit Union Name.

- (a) Unless a name change has been approved by the commissioner in accordance with the Act and these rules, a credit union shall do business under the name in which its certificate of incorporation was issued.
- (b) Subject to the requirements of this rule, a credit union may adopt an assumed name. The credit union's official name, however, must be used in all official or legal communications or documents, which includes account and membership agreements, loan contracts, title documents (except for vehicle titles, which may also be under the credit union's assumed name), account statements, checks, drafts, and correspondence with the Department or the National Credit Union Administration. The assumed name may also be used in those materials so long as it is identified as such (e.g. Generic Credit Union dba GCU). Further, a credit union using an assumed name shall clearly disclose the credit union's official name when the assumed name is used on any signs, advertising, mailings, or similar materials.
- (c) A credit union shall not use any name other than its official name until it has received a certificate of authority to use an assumed business name from the commissioner and has registered the designation with the Secretary of State and the appropriate county clerk.
- (d) The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business with an office in this state.
- (e) Credit union officials are responsible for complying with state and federal law applicable to corporate and assumed names.
- (f) Before using an assumed name, a credit union shall take reasonable steps to ensure that use of the name will not cause a reasonable person to believe the credit union's different facilities are different credit unions or to believe that shares or deposits in one facility are separately insured from those of another facility.

Source: The provisions of this §91.205 adopted to be effective May 11, 2000, 25 TexReg 3947; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7433; reviewed and amended to be effective November 8, 2009, 34 TexReg 7626; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.206. Underserved Area Credit Unions – Secondary Capital Accounts.

A credit union that has been approved for a designation as a Underserved Area Credit Union pursuant to Section 122.014, Finance Code may issue secondary capital accounts to members or nonmembers of the credit union on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall file an application for approval with the commissioner. The application shall be supported by a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts, along with such other information and data as the commissioner may require.

(2) The secondary capital account must be established as an uninsured secondary capital account or other form of non-share account, and shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(3) The secondary capital account must mature no earlier than five years.

(4) The secondary capital account shall not be redeemable prior to maturity.

(5) The secondary capital account holder's claim against the credit union must be subordinated to all other claims, including those of shareholders, creditors and the credit union's insuring organization.

(6) Funds deposited into the secondary capital account, including interest accrued and paid into the capital account, must be available to cover the credit union's realized operating losses that exceed its net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall not restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the secondary capital account holder or into a separate account from which the secondary capital account holder may make withdrawals. Losses realized shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(7) The secondary capital account may not be pledged or provided by the account holder as security on a loan or other obligation with the credit union or any other party.

(8) In the event of merger or other voluntary dissolution of the credit union, other than merger into another Underserved Area designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account holder.

(9) A secondary capital account contract agreement must be executed by an authorized representative of the account holder and the credit union. The agreement must set forth all of the terms and conditions of this section and contains a disclosure and acknowledgement by the account holder that the secondary capital account is not redeemable, will not be insured, may be used to cover operating losses of the credit union and not be replaced or replenished, and is subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the credit union's insuring organization. All such contract agreements must be retained by the credit union for the term of the agreement.

(10) In the event the credit union is classified as "critically under capitalized", "marginally capitalized", "minimally capitalized", "moderately capitalized" or "uncapitalized", or the credit union has failed to undertake any mandatory supervisory action, the commissioner or any entity insuring the accounts of the credit union, may prohibit payment of principal, dividends or interest on the credit union's secondary capital accounts in accordance with powers and procedures

granted under state or federal laws, as applicable. Any such unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

(11) Credit unions with secondary capital accounts shall record the funds on its balance sheet in an equity account entitled “uninsured secondary capital accounts”. The capital value of the accounts shall be kept in accordance with generally accepted accounting principles.

Source: The provisions of this §91.206 adopted to be effective March 14, 2004, 29 TexReg 2305; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7625; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.208. Notice of Known or Suspected Criminal Violations.

(a) Each credit union shall exercise reasonable due diligence to discover, investigate, and report theft, embezzlement, and other types of criminal activity affecting the credit union. The credit union shall provide written notice to the Department within 30 calendar days for any of the following known or suspected criminal violations:

- (1) Insider abuse involving any amount,
- (2) Other transactions, including potential money laundering or violations of the Bank Secrecy Act, aggregating \$5,000 or more,
- (3) Losses resulting from robbery or burglary.

(b) When applicable, a credit union may meet the reporting requirements of this section by providing the Department a copy of a Suspicious Activity Report prepared in accordance with the NCUA Rules and Regulations 12 C.F.R. §748.1(c). The timeframe for reporting the activity to the Department in this manner may be extended up to 60 days when authorized by the regulation.

Source: The provisions of this §91.208 adopted to be effective July 12, 2009, 34 TexReg 4512; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.209. Call Reports and Other Information Requests.

(a) Each credit union shall file a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner’s request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit

union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty \$50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to negate the credit union being assessed a civil money penalty under Section 202 of the Federal Credit Union Act (12 U.S.C. § 1782) for late or false/misleading filing of a quarterly call report (Form 5300). This penalty shall be abated in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, however, shall not be decreased below the amount authorized to be levied under subsection (a).

Source: The provisions of this §91.209 adopted to be effective August 9, 1998, 23 TexReg 7767; amended to be effective April 7, 2002, 27 TexReg 2434; amended to be effective November 16, 2005, 30 TexReg 7434; amended to be effective July 12, 2009, 34 TexReg 4512; reviewed and amended to be effective July 11, 2010, 35 TexReg 1898; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.210. Foreign Credit Unions.

(a) Definitions. (1) Foreign credit union -- a credit union that is not chartered or otherwise organized under the laws of this state or the United States. (2) Local service area -- an area that is within reasonable proximity of a foreign credit union's office, allowing members to be realistically served from that office.

(b) Application. Prior to commencing business in this state, a foreign credit union is required to file a written application supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of authority pursuant to Finance Code §122.013.

(c) Approval. The application shall not be approved unless the commissioner finds that the applicant:

(1) is acting in good faith and the application does not contain a material misrepresentation;

(2) is financially sound and has no supervisory problems;

(3) will conduct its operations in the State of Texas in accordance with the intent and purpose of the Act and Commission rules;

(4) has provided evidence of compliance with the Finance Code, §201.102 concerning registering with the secretary of state to do business in Texas;

(5) has share and deposit insurance equivalent to that required for credit unions organized under the Act;

- (6) has paid a permit fee of \$500 for each and every branch office proposed to be established in the State of Texas;
 - (7) has fidelity bond coverage satisfactory to the commissioner; and
 - (8) has provided all other information the commissioner may require.
- (d) Compliance with Texas law. A credit union chartered by another state shall comply with all applicable Texas laws, including those laws regarding home equity lending, loan interest rates, and consumer protection, to the same extent that those laws apply to a Texas credit union.
- (e) Federal treaties. If a treaty or agreement exists between the United States and a foreign country which requires the commissioner to permit a foreign credit union to operate a branch in this state and the commissioner determines that the applicant has substantially the same characteristics as a credit union organized under the Act, then the applicant must comply with all provisions of the Act and commission rules, unless otherwise permitted by this section.
- (f) Financial statements. Each foreign credit union that is operating a branch office within the State of Texas shall furnish to the commissioner a copy of its annual audited financial statements, if any, or other statements of financial conditions as the commissioner may require.
- (g) Examinations. The commissioner is authorized to examine the books and records of any branch office operated in the State of Texas by a foreign credit union. The costs of examination, as prescribed in §97.113(d) of this title (relating to Supplemental Examinations), must be fully borne by the foreign credit union. The supplemental examination fee may be waived or reduced at the discretion of the commissioner.
- (h) Agreements with other regulators. The commissioner shall enter into supervisory agreements with the foreign credit union regulators and, as necessary, the foreign credit unions, as authorized by Finance Code §15.411, to resolve any conflict of laws and to specify the manner in which the examination, supervision, and application processes will be coordinated with the regulators. The agreement may also prescribe the applicable laws governing the powers and authorities of the foreign branch and may address, but are not limited to, corporate governance and operational matters. The agreement, however, shall not limit the jurisdiction or authority of the commissioner to examine, supervise and regulate a foreign credit union that is operating or seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.
- (i) Field of membership. A certificate of authority to do business in this state is specifically issued to allow a foreign credit union to provide services to its existing field of membership. However, the commissioner may approve a foreign credit union's request to expand its field of membership to include groups with a community of interest that are within the foreign credit union's local service area if it is organized in a state or country that allows a credit union organized under the act to expand its field of membership to at least the same extent. After being satisfied that the group is within the foreign credit union local service area, the commissioner shall use the same criteria and the same procedures as used when a Texas credit union seeks to expand its field of membership. The commissioner shall make a reasonable effort to coordinate this determination with the foreign credit union's primary regulator to assure that each agency's material interests, authorities and responsibilities are fulfilled.
- (j) Location of Group. For the purposes of a field of membership expansion, 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 group's "paid from" or "supervised from" location is within the local service area.

(k) Prohibition against share/deposit production offices. A foreign credit union may not use its certificate of authority primarily for the purpose of deposit production. The foreign credit union is expected to reasonably help meet the credit needs of the groups in Texas that are served by the credit union. If the Commissioner determines that the foreign credit union's level of lending in Texas relative to the deposits from Texas members is less than half the average of total loans relative to total deposits for all credit unions domiciled in Texas, the credit union will not be permitted to further expand its field of membership nor open additional offices in Texas.

(l) Enforcement; penalty. The commissioner has grounds to issue a cease and desist order to an officer, employee, director, and/or the foreign credit union itself, if the commissioner determines from examination or other credible evidence that the credit union has violated or is violating any applicable Texas law or rules of the commission. If the foreign credit union does not comply with an order, the commissioner may assess an administrative penalty as authorized by §122.260, Finance Code, as well as suspend or revoke the certificate of authority.

Source: The provisions of this §91.210 adopted to be effective February 8, 2001, 26 TexReg 1131; amended to be effective June 8, 2003, 28 TexReg 4410; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

Subchapter J. Changes in Corporate Status

§91.1003. Mergers/Consolidations.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Acquirer credit union** - The credit union that will continue in operation after the merger/consolidation.

(2) **Acquiree credit union** - The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) **Merger inducement** - A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

(c) **Notice of Intent to Merge/Consolidate.** The credit unions shall notify the commissioner in writing of their intent to merge/consolidate within ten days after the credit unions' boards of directors formally agree in principle to merge/consolidate.

(d) **Plan for Merger/Consolidation.** Upon approval of a proposition for merger/consolidation by the boards of directors, the credit unions must prepare a plan for the proposed merger/consolidation. The plan shall include:

- (1) the current financial reports of each credit union;
- (2) the combined financial reports of the two or more credit unions;
- (3) an analysis of the adequacy of the combined Allowance for Loan and Lease

Losses account;

(4) an explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;

(5) a summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;

(6) a summary of the advantages and disadvantages of the merger/consolidation;

(7) the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(8) any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(e) **Submission of an Application to Merge/Consolidate to Department.**

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;

(C) the proposed Notice of Special Meeting of the members;

(D) a copy of the ballot form to be sent to the members;

(E) the current delinquent loan summaries for each credit union;

(F) if the acquiree credit union has \$65.2 million or more in assets on its latest call report, a statement as to whether the transaction is subject to the Hart-Scott Rodino Act premerger notification filing requirements; and

(G) a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the acquirer credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(3) Notice of the proposed merger must be published in the *Texas Register* and Department Newsletter as prescribed in §91.104 (relating to Notice of Applications).

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval.

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the acquirer credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the acquirer credit union after merger/consolidation are proposed to be substantially the same as those of the acquiree and acquirer credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) specify the purpose of the meeting and state the date, time, and place of the special meeting;

(B) state the reasons for the proposed merger/consolidation;

(C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner;

(D) provide the name and location of the acquirer credit union;

(E) specify the methods permitted for casting votes; and

(F) if applicable, be accompanied by a mail ballot.

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree credit union will be canceled.

Source: The provisions of this §91.1003 adopted to be effective May 11, 1998, 23 TexReg 4568; readopted to be effective November 19, 2001, 26 TexReg 9934; amended to be effective November 16, 2005, 30 TexReg 7434; amended to be effective November 11, 2007, 32 TexReg 7924; reviewed and amended to be effective November 8, 2009, 34 TexReg 7628; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.1005. Conversion to a Texas Credit Union.

(a) Authority to convert. A federal credit union or an out of state credit union is authorized to convert to a credit union incorporated under the laws of this state by Section 122.203 of the Act.

(b) Requirements for conversion. A credit union wishing to convert to a credit union incorporated under the laws of this state shall comply with the following requirements:

(1) Submit a complete application on a form and in a manner prescribed by the commissioner;

(2) Furnish evidence that the current federal or state regulatory agency having jurisdiction over the applicant has no preliminary objection to the conversion plan;

(3) Submit to a conversion examination by the department and pay the supplemental examination fee prescribed in Section 97.113 of this Title (relating to Fees and Charges). The commissioner may waive the examination or the fee, upon finding good cause;

(4) Furnish evidence confirming that the applicant has complied with all applicable requirements of and has completed the conversion in a manner satisfactory to the insuring organization and the current federal or state regulatory agency; and

(5) Furnish evidence that the applicant has established or will relocate its principal place of business in a specific location in the State of Texas.

(c) Approval. The commissioner shall approve the conversion once the conditions required by this section have been met and the commissioner finds that the applicant: (1) is financially sound; (2) has no material supervisory problems; and (3) can reasonably be expected to conduct its operations in a safe and sound manner and in accordance with the laws of this state. The commissioner may approve the conversion conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been met.

(d) Effective date. The conversion shall become effective immediately upon the issuance of the certificate of incorporation or on a stipulated date within 90 days of the conversion approval. On request and for good cause shown, the commissioner may grant a reasonable extension of the effective date.

Source: The provisions of this §91.1005 adopted to be effective July 2, 2006, 31 TexReg 5076; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.1006. Conversions to a Federal or Out-of-State Credit Union.

(a) Authority to Convert. A credit union organized under the laws of this state is authorized to convert to a federal credit union or an out-of-state credit union by Sections 122.201 and 122.202 of the Act.

(b) Requirements for Conversion. A credit union wishing to convert to a federal credit union or an out-of-state credit union shall comply with the following requirements:

(1) Furnish evidence to the department that a conversion proposal has been approved by a two-thirds vote of the board of directors;

(2) Submit copies of all filings made with any state or federal regulatory agency and insuring organization with jurisdiction over any aspect of the conversion process;

(3) Furnish evidence confirming that the insuring organization and the acquiring state or federal regulatory agency have no preliminary objections to the plan;

(4) Submit a vote certification as required by Section 91.1008(c) of this chapter showing that the conversion proposal was approved by an affirmative vote of a majority of the eligible members of the credit union voting; and

(5) Furnish written evidence confirming that the credit union has met all of the conversion requirements of the insuring organization and the acquiring state or federal regulatory agency.

(c) Approval. The commissioner shall approve the conversion if all of the conditions required by this section have been met, unless the commissioner determines the conversion is being made to circumvent a pending supervisory action that is about to be or has been initiated by the commissioner because of a concern over the safety and soundness of the credit union.

(d) **Effective Date.** Once the commissioner has approved the conversion, it shall become effective upon the issuance of a charter or certificate of incorporation from the acquiring state or federal regulatory agency.

Source: The provisions of this §91.1006 adopted to be effective July 2, 2006, 31 TexReg 5077; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 23, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.1007. Conversion to a Mutual Savings Institution.

(a) **Authority to convert.** A credit union organized under the laws of this state is authorized to convert to a mutual savings bank or association by Section 123.003 of the Act.

(b) **Requirements for conversion.** A credit union that is considering converting to a mutual savings bank or association must comply with the following requirements:

(1) **Preliminary communication with membership and department.** At least thirty days prior to a final vote by the board of directors to formally adopt a conversion proposal, the credit union shall send notice to the department and each member advising that the board is considering a possible conversion to a mutual savings bank or association. The notice shall, at a minimum, contain the following information: (a) a prominent legend in bold-face type that advises members of a potential conversion; (b) the electronic availability of information related to a potential conversion; (c) a telephone number and e-mail address that members may use to request copies of the potential conversion information that is available by electronic means; (d) the ability of members to submit written comments on the potential conversion; and (e) a clear, concise, and impartial description of the potential conversion to be considered by the board.

(2) **Information posted on Internet web site.** The credit union shall post information related to a potential conversion on the credit union's principal Internet web site at least thirty days prior to a vote by the board of directors to adopt a proposal of conversion. The posted information shall, at a minimum, discuss:

- (A) The business purposes that might be accomplished by a conversion;
- (B) The differences between and similarities of a credit union and a mutual savings institution;
- (C) An estimate of the anticipated conversion expenses;
- (D) The methods by which a member may request a copy of the posted information;
- (E) The method and timeline for members to submit written comments on the potential conversion; and
- (F) The process that will be followed if the board formally adopts a conversion proposal.

(3) **Written comments from members.** The board shall provide members a reasonable opportunity to submit written comments relating to a potential conversion. The board may hold a special meeting to receive member input regarding the potential conversion. It is within the board's discretion to determine the type, number, duration, and location of any special meeting(s). Before taking a final vote on a conversion proposal, the board should consider all written comments and any other member input received at any special meeting.

(4) **Adoption of a conversion proposal by the board.** Subsequent to the written comment period, the credit union may adopt, by the affirmative vote of at least two-thirds of the members of its board of directors, a conversion proposal consistent with this section. The credit union shall notify the department of the board's approval of the proposal within 5 days of the

approval. In addition, the following documents must be sent to the department as soon as reasonably practical:

(A) Copies of any filings made with any state or federal regulatory agency and insuring organization with jurisdiction over any aspect of the conversion process;

(B) A copy of the disclosure materials and the ballot to be sent to eligible members relative to voting on the conversion proposal;

(C) An estimated budget of the anticipated conversion expenses including legal, postage and mailing, advertising, printing, consulting fees, examination and operating fees, and any overtime or other employee compensation to be paid exclusively as a result of the conversion; and

(D) Any other information reasonably requested by the commissioner.

(5) Membership approval. The members of the credit union must approve the conversion proposal by an affirmative vote of a majority of those eligible members who vote on such proposal, unless the bylaws require a higher vote threshold. The credit union shall submit a vote certification as required by section 91.1008(c) of this chapter showing that the conversion proposal was approved by the members of the credit union;

(6) Insuring organization requirements. The credit union must furnish written evidence of its compliance with any voting procedures and disclosure requirements imposed by its insuring organization; and

(7) Other regulatory oversight. The credit union must furnish written evidence that it has met all conversion requirements of the acquiring state or federal regulatory agency.

(c) Notice, disclosure materials, and ballot mailed to members. The credit union shall mail to each eligible member, as defined in Section 91.1008 of this Chapter, a notice advising the member of the adoption and filing of the conversion proposal. The notice must include a prominent statement that the conversion will be decided by a majority of eligible members who vote on the issue (unless the bylaws require a higher vote threshold), and that each eligible member is only entitled to vote once. Also, incorporated with the mailing of the notice, eligible members shall be provided with plain language disclosures of material facts and information to be used as a basis for reaching an informed decision to vote on the conversion. The disclosures and ballot shall be submitted to the commissioner for approval. The commissioner may require changes in the disclosures and ballot provided to eligible members to assure full and adequate disclosure prior to the documents being mailed to eligible members.

(d) Conflict of interest. A director, officer, committee member, agent, or senior management employee of the credit union, and immediate family members of such individuals shall not, directly or indirectly, receive a fee, commission, or other consideration, other than that person's usual salary or compensation, for aiding, promoting, or assisting in a conversion under this section.

(e) Continuity of existence. The corporate existence of a credit union converting under this rule shall continue in its successor. Each member shall be entitled to receive a share or deposit account or accounts in the converted institution equal in amount to the value of accounts held in the former credit union subject to any lien or right of offset held by the credit union.

(f) Approval. The commissioner shall approve the conversion if all of the conditions required by this section have been met, unless the commissioner determines the conversion is being made to circumvent a pending supervisory action that is about to be or has been initiated by the commissioner because of a concern over the safety and soundness of the credit union.

(g) Effective date. Once the commissioner has approved the conversion, it shall become effective upon the issuance of a charter or certificate of incorporation from the acquiring state or federal regulatory agency.

Source: The provisions of this §91.1007 adopted to be effective July 2, 2006, 31 TexReg 5077; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.1008. Conversion Voting Procedures and Restrictions; Filing Requirements.

(a) Voting procedures. Eligible members may vote on a plan of conversion by written ballot either filed in person at a special meeting held on the date set for the vote or mailed by the member. The vote on a conversion proposal must be by secret ballot. Mail balloting must be conducted in accordance with §91.302 of this Chapter.

(b) Definitions.

(1) “Eligible Member” means a member of a credit union who is approved and fully qualified for membership in accordance with the credit union’s bylaws and written policies as of the eligibility record date.

(2) “Eligibility Record Date” means the cut off date for determining eligible members, which shall be deemed to be the last day of the month immediately preceding the date the credit union’s board of directors notifies members or the public that it is contemplating a conversion.

(c) Voting ballots. All ballots must include the following:

(1) The name of the credit union and the name of the proposed institution if the conversion is approved. This information may be incorporated into the body of the voting options;

(2) The date and time by which the ballot must be received if mailed; and

(3) The following statements, printed in a manner acceptable to the commissioner:

(A) The conversion will be decided by a majority of credit union members who vote on the issue (unless the bylaws require a higher vote threshold);

(B) Once a vote has been cast, it may not be changed; and

(C) A “yes” vote means the credit union will become a (insert conversion entity type) and a “no” vote means the credit union will remain a (insert state or federal) credit union.

(D) Vote certification. Within ten business days following a vote on a plan of conversion, the credit union shall file with the department a certified copy of a resolution of the board of directors stating that voting on the conversion has been completed in accordance with this section and setting out the following information:

(1) The total number of members eligible to vote;

(2) The number of eligible members who voted (either at the special meeting or by mail); and

(3) The total number of votes cast in favor and against the plan of conversion.

Source: The provisions of this §91.1008 adopted to be effective July 2, 2006, 31 TexReg 5078; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

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Subchapter L. Submission of Comments by Interested Parties

§91.3001. Opportunity To Submit Comments On Certain Applications.

- (a) An interested party may submit comments to the commissioner on the following matters:
 - (1) an application for incorporation under the Texas Finance Code, Section 122.001;
 - (2) an amendment to a credit union's articles of incorporation under the Texas Finance Code, Section 122.011, which includes an amendment to expand the credit union's field of membership; or
 - (3) an application to merge or consolidate under the Texas Finance Code, Section 122.152.
- (b) An interested party is a person or entity that has an interest in particular to the application other than as a member of the general public.
- (c) Acceptance of comments under this section does not constitute a determination of standing to protest or otherwise participate in a contested case hearing on the application.
- (d) Comments may be made in writing or provided in a meeting with the commissioner or deputy commissioner, as follows:
 - (1) written comments shall be submitted within 30 days after notice of the application is published in the Texas Register or the department's newsletter, whichever is later;
 - (2) a meeting to receive comments shall be held upon written request by an interested party or upon the commissioner's direction.

Source: The provisions of this §91.3001 adopted to be effective May 10, 1998, 23 TexReg 4568; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

§91.3002. Conduct Of Meetings To Receive Comments.

- (a) Meetings to receive comments under 91.3001 of this title (relating to opportunities to submit comments on certain applications) will be conducted in the following manner:
 - (1) a written request for a meeting to receive comments must be received by the department within 30 days after publication of the notice of the application and shall contain the following:
 - (A) the identity of the requestor, including the name of a natural person who represents a business entity or other association, mailing address, daytime telephone number, and a facsimile number if any;
 - (B) the name of the application and type of application;
 - (C) a description of the requestor's interest in the application; and
 - (D) a list of at least three dates and times within 30 days after the date of publication of notice of application, which are available for the meeting.
 - (2) the meeting will be scheduled and may be rescheduled, if necessary, by the commissioner to occur after at least three business days' notice by telephone, facsimile, or mail;
 - (3) one meeting may be scheduled to receive comments from more than one interested party, at the discretion of the commissioner;
 - (4) a limit on the length and other conditions for the conduct of the meeting may be imposed by the commissioner, and the conditions will be stated in the notice of the meeting;

- (5) the meeting may be conducted by telephone with the consent of the interested party; and
- (6) the department is not required to make a record of the meeting.
- (b) An interested party who fails to attend a meeting scheduled for the party's benefit may submit written comments within three days after the date scheduled for the meeting, but the commissioner is not required to schedule another meeting.
- (c) The purpose of the meeting is only to receive comments, and no decision, preliminary or otherwise, will be made at the meeting.

Source: The provisions of this §91.3002 adopted to be effective May 10, 1998, 23 TexReg 4568; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4550; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807.

CHAPTER 97

Subchapter A. General Provisions

§97.101. Meetings.

The time and place of regular and special meetings of the Commission and its committees shall be determined by the applicable chair and posted in accordance with the Open Meetings Act (Government Code, Chapter 551). The minutes of each meeting shall be in writing, shall be posted on the Department's website, and shall be available to any person to examine during the Department's regular office hours.

Source: The provisions of this §97.101 adopted to be effective March 8, 1984, 9 TexReg 1211; amended to be effective July 8, 1994, 19 TexReg 4946; amended to be effective December 9, 2001, 26 TexReg 9777; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4513; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

§97.102. Delegation of Duties.

The Commissioner is authorized to complete all filings necessary to facilitate the rule making powers of the Commission. The Commissioner may draft and sign final adoption orders and other such instruments where delegation is not restricted by statute or rule. Notwithstanding other provisions of this rule, this authority is conveyed only to promote administrative efficiency and to expedite properly approved decisions of the Commission.

Source: The provisions of this §97.102 adopted to be effective May 4, 1995, 20 TexReg 3015; readopted to be effective June 19, 2001, 26 TexReg 4886; readopted to be effective February 14, 2005, 30 TexReg 1091, reviewed and amended to be effective July 12, 2009, 34 TexReg 4513; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

§97.103. Recusal or Disqualification of Commission Members.

- (a) A commission member may not vote on or otherwise participate in the deliberation or decision of a matter pending before the commission:
 - (1) in which the commission member has a personal or private interest; or
 - (2) which directly affects the credit union of which the commission member is an officer, director, or member.
- (b) The term "personal or private interest" shall be given the meaning as prescribed in Texas Government Code, Section 572.058, and includes a direct personal or financial interest in a credit union or other matter which is the subject of commission action.
- (c) A commission member who is disqualified under subsection (a) of this section shall publicly disclose the fact to the commission in a meeting called and held in compliance with the Open Meetings Act, Texas Government Code, Chapter 551. The disclosure shall be entered in the minutes of the meeting.

- (d) A commission member who is recused or disqualified will be counted in determining a quorum.

Source: The provisions of this §97.103 adopted to be effective February 17, 1998, 23 TexReg 1303; readopted to be effective June 19, 2001, 26 TexReg 4886; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and readopted to be effective February 12, 2009, 34 TexReg 1452; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

§97.105. Frequency of Examination.

The department shall perform an examination of each credit union authorized to do business under the Act at least once during each 12-month period. Annual examination intervals may be extended by the Department to a maximum 18 months, subject to safety and soundness considerations. Intervals between examinations shall not exceed 18 months, unless a longer interval is authorized in writing by the commission. In lieu of conducting an examination required by this rule, the commissioner in the exercise of discretion may accept examinations or reports from other credit union supervisory agencies or insuring organizations.

Source: The provisions of this §97.105 adopted to be effective March 8, 1984, 9 TexReg 1211; amended to be effective December 9, 2001, 26 TexReg 9777; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and readopted to be effective February 12, 2009, 34 TexReg 1452; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and amended to be effective August 3, 2017, 42 TexReg 3744.

§97.107. Related Entities.

- (a) Definition. For the purposes of this section, a related entity is defined as:

1. a credit union service organization in which a credit union has a material interest by contracting with, lending to or investing in the organization;
2. a subsidiary or affiliate of a credit union service organization that is wholly owned or controlled by a credit union;
3. an organization engaged primarily in the business of managing a credit union; and
4. third-party contractors providing electronic data processing, electronic fund transfers, or other member services to or on behalf of a credit union.

(b) General Supervision. A credit union should perform a thorough analytical assessment to identify, measure, monitor, and establish controls to manage the risks associated with related entities and avoid excessive risk-taking that may threaten the safety and soundness of a credit union. The department may review the risks associated with any related entity and its activities together with other credit union risks using its supervision-by-risk framework. The department shall assess the effectiveness of a credit union's oversight program of related entities, including its strategic planning, third-party selection process, and ongoing monitoring.

(c) Examination. A credit union's use of related entities to achieve its strategic goals does not diminish the responsibility of the department to ensure that the activity is conducted in a safe and sound manner and in compliance with applicable law. Although in most situations, these activities should be conducted in the same manner that would be expected if the credit union were conducting the activities directly, the department shall consider the following factors in determining whether to examine exam related entities:

1. the high risk or unusual nature of the activities conducted by the related entity for the credit union;
2. the significance of the activities conducted by the related entity for the credit union to the credit union's operations and income; and
3. the extent to which the credit union has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the related entity. The department may examine a related entity, as the commissioner deems necessary to ensure that a credit union is not assuming excessive risk.

(d) Examination Fee. The related entity shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). A credit union may elect to pay the fee on behalf of the related entity. The supplemental examination fee for a related entity may be waived or reduced if the commissioner determines it is appropriate.

Source: The provisions of this §97.107 adopted to be effective March 14, 2004, 29 TexReg 2639; readopted to be effective February 14, 2005, 30 TexReg 1091, reviewed and amended to be effective July 12, 2009, 34 TexReg 4514; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

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Subchapter F. Rulemaking

§97.500. Petitions to Initiate Rulemaking Proceedings.

(a) Petitions to initiate rulemaking proceeding pursuant to Government Code, §2001.021, must be submitted to the Department in writing. A petition must include:

(1) a brief explanation of the proposed rule;

(2) the full text of the proposed rule, and, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and

(3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it.

(b) When the Department receives a rulemaking petition, the Department shall review it for compliance with the requirements of subsection (a) of this section. If the petition is determined to comply, the Department shall notify the applicant that the petition has been accepted for filing and will be processed in accordance with Government Code, §2001.021(c). If it is determined the petition does not comply with subsection (a), the Department shall notify the applicant in writing of all deficiencies found and give the petitioner an opportunity to cure them by filing an amended petition. If no amended petition curing the deficiencies is filed with the Department by 5:00 p.m. on the 15th calendar day following the date that the Department mailed a notice of deficiencies to the petitioner, the petition shall be deemed denied for the reasons stated in the deficiency notice without the necessity of further action.

(c) If the petition is accepted for filing, within 60 days of the date that a petition is accepted for filing, the Department must either deny the petition for reasons stated in writing or initiate a rulemaking proceeding.

Source: The provisions of this §97.500 adopted to be effective August 3, 2017, 42 TexReg 3744.

§97.501. Hearing on Proposed Rules.

(a) The Department shall grant an opportunity for a public hearing before adoption of any substantive rule as required by Government Code, §2001.029(b), or other applicable statute.

(b) The hearing may be held by the commissioner or by any other person designated by the commissioner. In the exercise of discretion, the commissioner may impose reasonable time limits on presentation of evidence and argument, determine the order of the presentations, and conduct the hearing in a manner suitable to the particular proceeding. Public hearings on proposed rules are neither contested cases nor full legal adversary proceedings. Ex parte prohibitions do not apply.

Source: The provisions of this §97.501 adopted to be effective August 3, 2017, 42 TexReg 3744.

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