



## ***CREDIT UNION DEPARTMENT***

**DATE:**       **March 25, 2019**

**TO:**           **State Chartered Credit Unions**

**SUBJECT:**   **Change 53 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**

### **INSERT**

### **AMENDMENTS OR NEW RULES**

91-29 thru 91-34

91-29 thru 91-34

Readopted Section 91.501 thru 91.516

91-35 thru 91-40

91-35 thru 91-40

Readopted Section 91.601 thru 91.610

95-1 thru 95-16

95-1 thru 95-16

Readopted Section 95.100 thru 95.400

**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.

## **Subchapter E. Direction of Affairs**

### **§91.501. Director Eligibility and Disqualification.**

(a) **Board Representation.** The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) **Qualifications.** A member may not serve as director of a credit union if that member:

(1) has been convicted of any criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);

(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;

(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;

(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;

(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) **Director application.** Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) **Director continuing education.** Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to achieve and maintain professional competence. The policy shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that is appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s).

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six (6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

*Source: The provisions of this §91.501 adopted to be effective May 11, 2000, 25 TexReg 3951; amended to be effective March 14, 2004, 29 TexReg 2636; amended to be effective July 8, 2007, 32 TexReg 3978; reviewed and amended to be effective July 10, 2011, 36 TexReg 4110; reviewed and amended to be effective July 13, 2014, 39 TexReg 5147; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

**§91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.**

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

(b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors, (hereafter referred to as directors) or committee members for attending duly called meetings at which appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to annual report to membership). A credit union, however, may not pay any meeting fees to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are excessive as defined in §91.502(f).

(d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

(1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;

(2) the board of directors develops and maintains written policies and procedures regarding this matter; and

(3) the arrangement ceases immediately upon the person's leaving office.

(e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

- (1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and
- (2) it is in accordance with written board policies and procedures.

*Source: The provisions of this §91.502 adopted to be effective August 14, 2000, 25 TexReg 7632; amended to be effective July 11, 2004, 29 TexReg 6628; amended to be effective July 8, 2007, 32 TexReg 3979; reviewed and amended to be effective July 10, 2011, 36 TexReg 4110; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

### **§91.503. Change in Credit Union President**

The board of directors, in executing its fiduciary responsibilities, may find it necessary to replace the credit union's president. The board shall submit written notification to the commissioner within ten days of any such personnel change. For purposes of this section, the term president refers to the individual responsible for the day-to-day operation of the credit union, irrespective of the actual title given to such individual.

*Source: The provisions of this §91.503 adopted to be effective January 7, 2004, 29 TexReg 82; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

### **§91.510. Bond and Insurance Requirements.**

(a) Fidelity bond. Each credit union shall purchase and maintain a blanket fidelity bond covering the officers, directors, employees, committee members, and its agents, against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery or alteration of instruments, misplacement or mysterious disappearance. All carriers writing credit union blanket bonds must be authorized by the Insurance Commissioner for the state of Texas as an acceptable fidelity on bonds in this state.

(1) Subject to approval by the credit union's board of directors, the amount of coverage to be required for each credit union shall be determined by the credit union, based on its assessment of the level that would be safe and sound in view of the credit union's potential exposure to risk.

(2) Each credit union may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the credit union's board of directors, additional coverage is warranted.

(3) The commissioner may require additional coverage of any credit union when, in his opinion, the fidelity bond in force is insufficient to provide adequate fidelity coverage. It

shall be the duty of the board of directors to obtain the additional coverage within 30 days after the date of written notice of the findings by the commissioner.

(b) Cancellation. A fidelity bond must include a provision requiring written notification by the fidelity to the commissioner prior to cancellation of any or all coverages set out in the bond which includes a brief statement of cause for termination.

(c) Other insurance. Each credit union shall, subject to approval by the board, purchase appropriate insurance coverages to insure the credit union and its assets against loss or damage by fire, liability, casualty or any other insurance risks.

(d) Board review. The board of directors of each credit union shall formally approve the credit union's bond and insurance coverages. In deciding whether to approve the coverages, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board's approval shall be included as part of the minutes of the meeting at which the board approves coverages. Additionally, the board of directors shall review the credit union's bond and insurance coverages at least annually to assess the continuing adequacy of coverage.

(e) Review by fidelity company. Credit unions which are analyzed by a fidelity company shall notify the commissioner of the analysis within 30 days of the review commencement. The report of the review is to be provided to the commissioner upon request. The confidentiality of the report shall be preserved in the same manner afforded a report of examination conducted by the department.

(f) Insuring organization's bond requirements. A credit union shall also comply with all bond requirements imposed by an insuring organization as a condition to maintain insurance on share and deposit accounts. Any credit union that fails to meet the minimum fidelity bond specifications contained within Part 741.201 of the NCUA Rules and Regulations may be deemed to be engaged in an unsafe practice pursuant to Finance Code §122.255.

*Source: The provisions of this §91.510 adopted to be effective August 14, 2000, 25 TexReg 7633; amended to be effective on July 11, 2004, 29 TexReg 3980; amended to be effective July 8, 2007, 32 TexReg 3980; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

### **§91.515. Financial Reporting.**

(a) Each credit union having assets of \$5 million or greater shall:

(1) prepare and maintain, on an accrual basis, accurate and complete records of its business transactions in accordance with generally accepted accounting principles, except as otherwise directed by regulatory requirements; and

(2) prepare its financial statements and reports, including reports to the members, board of directors, management and the department, in accordance with generally accepted accounting principles, except as otherwise directed by regulatory requirements.

(b) Credit unions having assets of less than \$5 million may use another comprehensive basis of accounting.

(c) In addition to the quarterly report to the department as prescribed by the Act, the commissioner may require from all credit unions or from selected categories of credit unions other financial and statistical reports relating to financial condition and accounting practices.

*Source: The provisions of this §91.515 adopted to be effective May 11, 2000, 25 TexReg 3952; amended to be effective March 14, 2004, 29 TexReg 2637; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

## **§91.516. Audits and Verifications.**

(a) **Audit requirements.** At least once every calendar year, the board of directors shall obtain or cause to be performed an annual audit of the credit union which must cover the period elapsed since the last audit period. A summary of the audit must be reported to the members at the next membership meeting. The audit must be conducted in accordance with generally accepted auditing standards by a licensee of the Texas State Board of Public Accountancy or as permitted under the provisions of §741.202(a) of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741).

(b) **Definitions.**

(1) A record-keeping deficiency is serious if the commissioner reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets.

(2) A serious recordkeeping deficiency is persistent when it continues beyond a usual, expected or reasonable period of time.

(c) **Verification obligation.** The board of directors shall, at least once every two years, cause the share, deposit, and loan accounts to be verified against the records of the credit union as prescribed in §741.202(b) of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741).

(d) **Remedies.** The commissioner may compel a credit union to obtain an audit and/or a verification of members' accounts, performed by an independent person, for any year in which any one of the following conditions is present:

(1) the credit union has not obtained an annual audit or caused an audit/verification to be performed;

(2) the credit union has obtained an audit/verification or performed an audit/verification which does not meet the specified requirements; or

(3) the credit union has experienced serious and persistent recordkeeping deficiencies.

(e) **Opinion audit required.** The commissioner may compel a credit union to obtain an opinion audit performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed by the state for any year in which the credit union has experienced persistent serious recordkeeping deficiencies. The objective of such an audit is to obtain an unqualified opinion on the credit union's financial statements.

*Source: The provisions of this §91.516 adopted to be effective May 11, 2000, 25 TexReg 3952; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective July 8, 2007, 32 TexReg 3981; reviewed and amended to be effective on July 10, 2011, 36 TexReg 4110; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 18, 2019, 44 TexReg 1533.*

## **Subchapter F. Accounts and Services**

### **§91.601. Share and Deposit Accounts.**

- (a) **Accounts.** A credit union may offer any type of share or deposit accounts and prescribe the terms and conditions relating to the accounts as established by written policies approved by the board of directors.
- (b) **Policies and procedures.** Each credit union, before accepting any funds for any share or deposit accounts, shall adopt, implement and maintain appropriate policies and procedures which address, at a minimum, asset liability management and adequate liquidity levels.
- (c) **Limitation on deposit accounts.** Acceptance of funds from a depositor authorized by the Act that is not within the credit union's field of membership is subject to the limitations prescribed by §123.201(b) of the Act. This restriction does not apply to a credit union accepting for deposit the money of:
- (1) the United States or any agent or instrumentality of the United States;
  - (2) this or another state; or
  - (3) a political subdivision of this or another state.
- (d) **Nonmember deposit.** The written documentation evidencing a deposit under subsection (c) of this section shall clearly and conspicuously disclose that the funds are not insured. This section does not apply to insured deposits from other credit unions or deposits received by a credit union with a low-income designation.

*Source: The provisions of this §91.601 adopted to be effective August 14, 2000, 25 TexReg 7633; readopted to be effective February 24, 2004, 29 TexReg 2393; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

### **§91.602. Solicitation and Acceptance of Brokered Deposits.**

- (a) **Definitions.**
- (1) **Brokered deposit** means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.
  - (2) **Deposit broker** means a person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with financial institutions; or the business of placing funds with financial institutions for the purpose of selling interests in the deposit to third parties.
- (b) **Limitation.** A credit union that has a net worth ratio of less than six percent as defined in §91.901 of this title (relating to Reserve Requirements) or is not deemed adequately capitalized by its insuring organization may not accept, renew or roll over any brokered deposit unless it has been granted a waiver by the commissioner.
- (c) **Risk management and due diligence.** Credit unions utilizing brokered deposits shall ensure that proper risk management practices are in place, including appropriate written asset/liability management policies, business strategies, concentration limits, monitoring procedures, and contingency funding plans. In addition, credit unions must implement adequate due diligence procedures before entering into a business relationship with a deposit broker.

*Source: The provisions of this §91.602 adopted to be effective August 14, 2000, 25 TexReg 7634; amended to be effective July 11, 2004, 29 TexReg 6629; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*



### **§91.608. Confidentiality of Member Records.**

(a) Confidentiality of members' accounts. No credit union officer, director, committee member or employee may disclose to any person, other than the member, or to any company or governmental body the individual savings, shares, or loan records of any credit union member, contained in any document or system, by any means unless specifically authorized to do so in writing by such members, except as follows:

(1) reporting credit experience to a bona fide credit reporting agency, another credit union, or any other bona fide credit-granting business and/or merchants information exchange, provided that applicable state and federal laws and regulations pertaining to credit collection and reporting are followed;

(2) furnishing information in response to a valid request from a duly constituted government agency or taxing authority, or any subdivision thereof, including law enforcement agencies;

(3) furnishing information, orally or in written form, in response to the order of a court of competent jurisdiction or pursuant to other processes of discovery duly issuing from a court of competent jurisdiction;

(4) furnishing reports of loan balances to co-borrowers, co-makers, and guarantors of loans of a member and of share or deposit account balances, signature card information, and related transactions to joint account holders;

(5) furnishing information to and receiving information from check and draft reporting, clearing, cashing and authorization services relative to past history of a member's draft and checking accounts at the credit union; or

(6) as otherwise authorized by law, including access by examiners of the Department.

(b) Non-disclosure statement. Nothing in this rule shall prohibit the credit union from releasing the name and address of members to assist the credit union in its marketing efforts or sale of third party products, provided, however, that the credit union obtains a written non-disclosure statement providing assurances that the information will be used exclusively for the benefit of the credit union and no other.

(c) Privacy policy. Each credit union shall develop, implement and maintain a written policy on the protection of nonpublic personal information of individual members in its possession. This policy shall be consistent with the disclosure and reporting requirements applicable to federally insured credit unions as addressed in Part 716 of NCUA Rules and Regulations.

(d) Relation to federal laws. This section shall not be construed as altering or affecting any applicable federal statute, regulation, or interpretation that affords a member greater protection than provided under this section.

*Source: The provisions of this §91.608 adopted to be effective August 14, 2000, 25 TexReg 7634; amended to be effective July 11, 2004, 29 TexReg 6630; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

## **§91.610. Safe Deposit Box Facilities.**

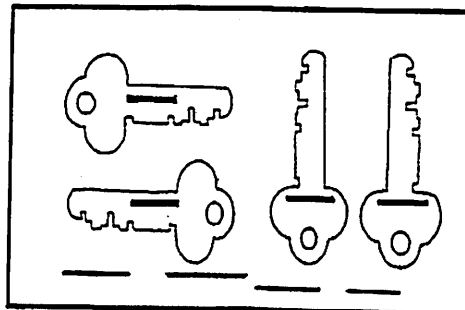
(a) Purpose. Finance Code §59.110 requires credit unions to imprint keys issued to safe deposit boxes with the institution's routing number. In addition, it requires a report to the Department of Public Safety if the routing number is altered or defaced so that the correct routing number is illegible. The purpose of this section is to clarify the requirements of the noted section of the Finance Code.

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

(1) Credit union — This term includes all state or federal credit unions that have been assigned a routing number unique to that institution.

(2) Routing number — The number printed on the face of a share draft or check in fractional form or in nine-digit form that identifies a paying financial institution.

(c) Imprinting requirements. A credit union which has been issued a routing number shall imprint that routing number on safe deposit box keys on either the head of the key or the shank of the key if there is adequate room. The typical locations to be used are indicated in the following instructions and diagram. The imprint can be made anywhere on the key that has the required space available. When positioning the die on the key, be careful to place the die on the key where it will imprint on a flat surface and not in the area of the key cuts or on any of the shank ridges or grooves. Imprinting in these areas may interfere with the proper working of the key in the lock and may cause damage. In the event these standard areas for the location of the imprint are unavailable, either because of grooves on the key shank or the fact that the head of the key already has names and other numbers imprinted on it, then the credit union may attach to the key a tag imprinted with the routing number. The tag used must be of such a nature as to be secure. Thus, a paper or cardboard tag or a tag affixed with string will not be acceptable. However, any other medium such as plastic or metal which can retain an imprint of a number shall be acceptable. The tag may be attached in any way to assure its affixation to the key. Typically, this will mean inserting the tag or a device to affix the tag through the hole in the head of the key normally used for placing keys on key chains. The tag method shall not be used if there is adequate room on the key itself for imprinting the numbers. There are four standard areas for the location of the imprinted routing number. These include: the head of the key, the shank of the key, and either place on the reverse side of the key. The standard imprint areas are shown as follows.



(d) Branch designation. A credit union may, but is not required to, add a three-digit branch designation to its routing number. Thus, the main credit union facility should receive the designation "001" and branch facilities should receive numbers consecutively beginning with "002" with successive numbers as needed. However, the credit union may control the branch numbering system used provided that the credit union maintains a master list of branch designations used for this

purpose. The master list should be maintained at the main office of the credit union and shall include the three-digit branch designation and address of facility. The credit union then may imprint safe deposit box keys or tags with the routing number plus three-digit branch designation for full identification of the facility.

(e) Report of defaced or altered key. Within 10 days after an officer or employee of a credit union observes that a key used to access a safe deposit box has had the routing number altered or defaced or the tag removed, a report shall be prepared of such incident. The report shall be on a form promulgated by the Credit Union Department in the form of the attached **Exhibit A**. The report should be submitted to the Department of Public Safety, Attention: Criminal Law Enforcement, Box 4087, Austin, Texas 78773-0001. The report should be mailed no later than ten days after the incident. The credit union should retain one copy of the incident report for a period of three years. Nothing in this rule nor in the Finance Code §59.110 shall require a credit union to inspect routing numbers imprinted on a key or an attached tag to determine if the number has been altered or defaced.

(f) Effective date; applicability to existing keys. A credit union must imprint all safe deposit box keys on or after September 1, 1992. Additionally, the imprinting requirement applies to all keys issued prior to September 1, 1992. However, keys for boxes rented prior to September 1, 1992, need not be imprinted with the routing number unless and until a member presents a safe deposit box key at a credit union for access to a box. Nothing in this rule or the Finance Code §59.110 shall be construed to require a credit union to provide notice to its safe deposit box users or to otherwise require such members to present their keys for imprinting. However, on the first date after September 1, 1992, that a member presents a key which has not been imprinted, the credit union shall imprint the key with the routing numbers as required by Finance Code §59.110.

(g) Effect of change in routing number. In the event a credit union's routing number is changed as a result of a merger, acquisition, or other change, safe deposit box keys need not be replaced with a new routing number provided that the credit union maintains a master list of the routing numbers used to imprint keys.

*Source: The provisions of this §91.610 adopted to be effective August 14, 2000, 25 TexReg 7635; readopted to be effective February 24, 2004, 29 TexReg 2393; amended to be effective July 8, 2007, 32 TexReg 3981; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569; reviewed and readopted to be effective February 23, 2015, 40 TexReg 1112; reviewed and readopted to be effective March 8, 2019, 44 TexReg 1533.*

**REPORT OF DEFACED OR ALTERED ROUTING NUMBER  
ON SAFE DEPOSIT BOX KEY**

**INSTRUCTIONS:** Complete the information below and submit the original report to Department of Public Safety, Attn: Criminal Law Enforcement, Box 4087, Austin, Texas 78773-0001, no later than 10 days after the defaced or altered key is used to access the box. Retain one copy for your files for a period of three years.

**CREDIT UNION INFORMATION**

Name of credit union \_\_\_\_\_

Address of safe deposit box facility \_\_\_\_\_

\_\_\_\_\_

Name and title of contact person at facility \_\_\_\_\_

\_\_\_\_\_

Area code and phone number of facility \_\_\_\_\_

Routing number and branch designation (if any) \_\_\_\_\_

**INCIDENT INFORMATION**

Member name \_\_\_\_\_

Date member presented defaced or altered key \_\_\_\_\_

Description of problem with key \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date of reports: \_\_\_\_\_

**Exhibit A**

\_\_\_\_\_

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## CHAPTER 95

### Subchapter A. Insurance Requirements

#### §95.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) “Act” means the Texas Credit Union Act (Texas Finance Code, Subtitle D).
- (2) “Deposit” means a balance held by a credit union and established by a credit union member, another credit union, a governmental unit, or an authorized nonmember in accordance with standards specified by the credit union, including balances designated as deposits, deposit certificates, checking accounts or accounts by other names. A “deposit” is a debt which earns interest and is owed by the credit union to the account holder.
- (3) “Federally-insured” means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF) under Title II of the Federal Credit Union Act (12 USC Section 1781 et. seq.), or its successor.
- (4) “Insuring organization” means a cooperative share insurance fund or a guaranty corporation or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions will be protected or guaranteed against loss up to a specified level for each account.
- (5) “Membership share” means a share of the credit union which shall be the balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. In the case of a joint account, the account may serve to represent the membership of each of the joint owners who have applied for and were accepted as members, as long as a full membership share for each joint owner seeking membership is maintained in the account.
- (6) “Participating credit union” means a credit union that has applied for and been admitted to participate in an insuring organization’s program and whose participation has not been terminated.
- (7) “Shares” means a balance held by a credit union and established in accordance with standards specified by the credit union including, but not limited to shares, share accounts, share certificates, share draft accounts or other such accounts. “Shares” may include membership shares. In addition, “shares” earn dividends.

*Source: The provisions of this §95.100 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

#### §95.101. Share and Depositor Insurance Protection.

- (a) Each credit union incorporated under the Act or otherwise authorized to do business in this state shall obtain share and deposit insurance for the protection of its members’ accounts. Such share and deposit guarantee insurance may be obtained from the NCUA through the

NCUSIF or from an insuring organization approved by the commissioner, with the advice and consent of the commission.

(b) Any credit union that fails to maintain in full force and effect share and deposit insurance protections as provided in this section shall cease accepting deposits and making loans immediately and shall terminate its corporate existence in this state under such terms and conditions as the commissioner deems appropriate.

*Source: The provisions of this §95.101 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

#### **§95.102. Qualifications for an Insuring Organization.**

(a) An insuring organization must, at a minimum, demonstrate the following prerequisites and must continue to meet these standards on an ongoing basis, in order to do business in this state:

(1) The insuring organization is authorized to provide share and deposit insurance protection in its state of domicile or in the State of Texas;

(2) The insuring organization is in good standing with the regulatory authorities in its state of domicile;

(3) The insuring organization receives regular examinations from its state of domicile;

(4) The insuring organization has capital which is adequate for its prospective business; and

(5) The insuring organization has loss reserves that are actuarially sound.

(b) In addition to the prerequisites delineated above, the department may scrutinize other data and information as the commissioner deems appropriate, including, but not limited to, demonstrated expertise in insuring credit union shares and deposits.

(c) The department shall have the right to examine the books and records of the insuring organization as part of the approval process. The insuring organization shall be assessed the supplemental examination fee as prescribed in <\*>97.113 of this title (relating to Fees and Charges). The insuring organization shall pay the fee to the department within thirty days of the assessment.

(d) The department may, in approving an insuring organization, impose such written conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

(e) If an approved insuring organization subsequently fails to meet any of the prerequisite standards or written conditions imposed by the department, the commissioner, in the exercise of discretion, may provide a reasonable period of time for the insuring organization to take corrective actions to bring its operations back into compliance. During this period of corrective action, however, an insuring organization may not contract with any additional credit unions to provide share and deposit insurance protection.

*Source: The provisions of this §95.102 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and amended to be effective March 10, 2011, 36 TexReg 1657; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.103. General Powers and Duties of an Insuring Organization.**

In carrying out its general purposes, an insuring organization may:

- (1) guarantee to participating credit unions the payment of any deficiency in an individual member's share or deposit account(s) caused by credit union's insolvency or any other reason;
- (2) issue share and deposit insurance contracts or otherwise effect credit union share guaranty, and enter into other contracts necessary or advisable in the conduct of its business;
- (3) advance funds in accordance with agreed upon lending terms and conditions to aid participating credit unions to operate and to meet liquidity needs;
- (4) upon the written order of the commissioner, and at such compensation as shall be agreed upon, the insuring organization may assume control of the property and business of any participating credit union and operate it at the direction of the commissioner until its financial stability has been reestablished to the satisfaction of the commissioner, or the credit union has been liquidated or merged into another credit union;
- (5) assist in the merger, consolidation, or liquidation of participating credit unions;
- (6) receive money or other property from participating credit unions;
- (7) conduct investigation and audits of any applicant or participating credit union in order to determine the financial and operating condition of the applicant or participating credit union; and
- (8) establish conditions for participation by credit unions, including the establishment of risk eligibility standards.

*Source: The provisions of this §95.103 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.104. Notices.**

- (a) An insuring organization shall provide written notice to the department of receipt of any application for participation by a credit union. Within 30 days of receipt of the notice, the department will advise the applicant and the insuring organization if it will interpose an objection to the proposal based on safety and soundness concerns. Any such objection must be addressed to the satisfaction of the department before the applicant will be eligible to participate in the insuring organization's program. The insuring organization shall also be responsible for notifying the department of its underwriting decision on any application and advising the department when an applicant has become a participating credit union.
- (b) At least 30-days prior to the effective date of any termination, an insuring organization shall notify the department in writing of any termination, voluntary or involuntary, of a participating credit union.

*Source: The provisions of this §95.104 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*



### **§95.105. Reporting.**

- (a) Within one hundred days after the close of a fiscal year, an insuring organization shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering that fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant. In addition, at least once every three years, the audit shall include an actuarial study of the capital adequacy of the insuring organization.
- (b) The provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

*Source: The provisions of this §95.105 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.106. Amount of Insurance Protection.**

- (a) The primary insured or guaranteed amount for share and deposit accounts of individual members of participating credit unions shall never be less than the corresponding share insurance coverage provided by the NCUSIF or its successor.
- (b) With the approval of the commissioner and if authorized by the insuring organization, a participating credit union may, from time to time as determined by its board of directors, issue membership shares that are not guaranteed and are subordinate to all other claims, including creditors, shareholders and the insuring organization.

*Source: The provisions of this §95.106 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.107. Sharing Confidential Information.**

In order to permit the insuring organization to assess the financial condition and performance of a participating credit union, the department shall, with the consent of such participating credit union, provide to the insuring organization any and all reports of examination conducted by, and orders and determinations issued by, the commissioner regarding that institution.

*Source: The provisions of this §95.107 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.108. Examinations.**

- (a) The department may conduct examinations and investigations within or outside this state to determine whether an insuring organization has engaged, is engaging or is about to engage in

any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to the insuring organization.

(b) In lieu of an examination under this section, the commissioner may accept the examination report of another regulator authorized to examine the insuring organization.

*Source: The provisions of this §95.108 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

#### **§95.109. Fees and Charges.**

(a) An insuring organization shall pay the cost associated with an examination as prescribed in Section 97.113(k) of this title (relating to Foreign Credit Union Examination Fees).

(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the insuring organization.

*Source: The provisions of this §95.109 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

#### **§95.110. Enforcement; Penalty; and Appeal.**

(a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b), (c), (d) and (e), Finance Code, to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §121.002(11)(C). If the insuring organization does not comply with the order, the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, Finance Code, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.

(b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Finality and Request for SOAH Hearing).

*Source: The provisions of this §95.110 adopted to be effective July 8, 2007, 32 TexReg 3982; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

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## **Subchapter B. Liquidating Agents**

### **§95.200. Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights.**

- (a) The department shall give prompt notice to the NCUA or the applicable insuring organization whenever the commissioner takes possession of the property and assets of a respective federally-insured or participating credit union. The Department shall give further prompt notice whenever the commissioner determines to liquidate the property and assets of such federally-insured or participating credit union.
- (b) If the commissioner finds that the closing of a credit union and the liquidation of the credit union's assets are in the public interest and the best interest of the credit union members, depositors, and creditors, the NCUA or, alternatively, the insuring organization shall be appointed liquidating agent for the purpose of liquidation or the winding up of the affairs of the credit union.
- (c) When any member's share or deposit account is paid, the NCUA or, alternatively, the insuring organization shall be subrogated to all rights of the member, up to the amount paid by the NCUA or the insuring organization to such member.

*Source: The provisions of this §95.200 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1065; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224.*

### **§95.205. State Not Liable for Any Deficiency.**

Nothing in this chapter creates any liability upon this state for the payment of any funds to any credit union by reason of the acts or omissions of the NCUA or insuring organization, nor shall the state pay any deficiency of any credit union in the event the NCUA or insuring organization is unable to pay such deficiency.

*Source: The provisions of this §95.205 adopted to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

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## **Subchapter C. Guaranty Credit Union**

### **§95.300. Share and Deposit Guaranty Credit Union.**

(a) The commissioner may authorize, with the advice and consent of the commission, the establishment of a share and deposit guaranty credit union. The charter shall be granted only on proof satisfactory to the commissioner that member credit union convenience and advantage will be promoted by the establishment of the guaranty credit union. In determining whether the convenience and advantage will be promoted, the commissioner shall consider:

(1) Whether the organizational and capital structure and amount of initial capitalization is adequate for the business;

(2) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the credit unions sought to be served;

(3) Whether the credit union's guarantee fund and reserves are actuarially reasonable and computed in accordance with accepted loss reserving standards and principles;

(4) Whether the long-term financial condition of the entity would prejudice the interest of participating credit unions;

(5) Whether the proposed officers, directors, and managers have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the guaranty credit union will operate in compliance with the law and that the long term success of entity is probable; and

(6) Whether the organizers are acting in good faith.

(b) Prior to commencing business in this state, a guaranty 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 to issue a certification of incorporation. The organizers bear the burden of proof to establish that the incorporation of the guaranty credit union will promote credit union member convenience and advantage. The failure of an applicant to furnish required information, data, professional opinions, and other material is considered an abandonment of the application.

(c) The commissioner may require, for submission to the department of public safety, the name and fingerprints of any organizer, director or officer of any guaranty credit union.

(d) The commissioner may, in approving a guaranty credit union, impose such conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

*Source: The provisions of this §95.300 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224.*

### **§95.301. Authority for a Guaranty Credit Union.**

If a guaranty credit union is authorized, the commissioner shall issue a certificate of incorporation which shall provide that said guaranty credit union shall operate as a central credit union including share and deposit guaranty insurance protection for members subject to supervision, regulation, and examination by the department.

*Source: The provisions of this §95.301 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.302. Powers.**

The guaranty credit union, pursuant to Texas Finance Code §15.410(b) and to the powers contained in Subtitle D, Title 3, Texas Finance Code, may:

- (1) Purchase, hold, lease, receive, use, encumber, sell, exchange, transfer, lend, advance, convey, assign, give, grant, transmit, hypothecate, or dispose of property or funds of any description, nature, or kind or of any interest, rights, title, or privileges therein from or to any participating credit union or any corporation, association, or person, provided that any gift, grant, or transfer of a similar nature shall be made only with the approval of the commissioner;
- (2) Declare and pay dividends on the membership investment fund;
- (3) Make any type of investment authorized by law for a credit union chartered in this state;
- (4) Act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into the court for participating credit unions;
- (5) Accept funds or money for deposit by fiduciaries, trustees, or receivers if managing or holding funds on behalf of a participating credit union;
- (6) Accept funds or money for deposit by financial institutions, trust companies, or insurance companies, if membership or primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of participating credit unions or organizations of participating credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist operations of participating credit unions;
- (7) Act as custodian of individual retirement accounts or of pension funds of participating credit unions, or as trustee under pension and profit sharing plans of participating credit unions;
- (8) Make deposits, purchase shares, and invest in legally chartered credit unions, trust companies, or other financial institutions;
- (9) Impress a lien or exercise its right of setoff on the deposits, dividends, and interest of any participating credit union to the extent of any loans or other obligations due by the participating credit union;
- (10) Make or issue, with the approval of the commissioner, a guarantee or other form of written assurance to the appropriate person, association, corporation, or other entity which is reasonably necessary to facilitate the sale, conveyance, assignment, transfer, or other disposition of all or any part of the property or assets of a participating credit union, and otherwise assist in the merger, consolidation, conservation, suspension, or liquidation of a participating credit union upon the request and under the instruction of the commissioner;

- (11) Advance funds, with or without interest, in accordance with agreed terms and conditions, to aid participating credit unions to continue to operate and to maintain solvency or to maintain account balances with any financial institution in connection with the assumption of receivables from a participating credit union, or to meet liquidity requirements;
- (12) Purchase from a participating credit union any equitable or other interest in its assets at book value or at some other value mutually agreed upon by such credit union and the board of directors of the guaranty credit union, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as the board of directors of the guaranty credit union may determine, provided, however, that all such terms, conditions, agreements and values are approved in writing by the commissioner;
- (13) Exercise any setoff or lien rights that a participating credit union may have when the guaranty credit union is acting as conservator or liquidating agent for such credit union;
- (14) Exercise rights of subrogation to the extent of all rights the depositors or shareholders may have against a participating credit union to the extent of any payments made by the guaranty credit union to the depositors or shareholders of such credit union, including the right to receive the same dividends, as would have been payable to the depositor or shareholder;
- (15) Raise any defense to the payment of a claim or an insured account which a participating credit union could have raised, and when made, the actual payment of an insured account to any person by the guaranty credit union shall discharge the guaranty credit union to the same extent that payment to such person by the participating credit union would have discharged it from liability for the insured account;
- (16) Acquire a promissory note or other asset upon which a nonmember is liable, provided such acquisition is made, in the discretion of the guaranty credit union, to protect an inferior lien held by the guaranty credit union, a participating credit union, member of the guaranty credit union or a member of a participating credit union member of the guaranty credit union. Such acquisitions shall not be subject to the restrictions of §91.701 et. seq. of this title (relating to Loans);
- (17) Enter into contracts of insurance or reinsurance, insuring in whole or in part its contractual guarantees to participating credit unions and any other insurance or bonding company contracts necessary or advisable in the conduct of its business, provided a guaranty credit union shall not assume any risks from another insurer; and
- (18) Exercise the powers granted corporations organized under the laws of this state and such other additional incidental powers not inconsistent with these sections and Subtitle D, Title 3, Texas Finance Code, as may be necessary to enable the guaranty credit union to promote and carry out effectively its purposes.

*Source: The provisions of this §95.302 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

### **§95.303. Subordination of Right, Title, or Interest.**

No agreement which tends to diminish or defeat the right, title or interest of the guaranty credit union in any asset acquired by it, either as security for a loan or by purchase, shall be valid against the guaranty credit union unless such agreement shall be in writing; shall have been



executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union; shall have been approved by the board of directors of the credit union with such approval reflected in the minutes of said board; and shall have been, continuously, from the time of its execution, an official record of the credit union.

*Source: The provisions of this §95.303 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; readopted to be effective November 12, 2006, 31 TexReg 9044; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

#### **§95.304. Capital Contributions; Membership Investment Shares; Termination.**

(a) A guaranty credit union shall establish and maintain a guarantee fund. The fund shall be maintained at a normal operating level as defined by the board of directors of the guaranty credit union and approved by the commissioner, however, the normal operating level shall at all times not be less than one percent of the aggregate share capital of participating credit unions. The fund of the guaranty credit union shall be comprised of the following:

- (1) The membership investment shares of each participating credit union;
- (2) Retained and undivided earnings; and
- (3) Any reserves required by the commissioner.

(b) Each participating credit union shall contribute to and maintain with a guaranty credit union a membership investment share, in an amount equal to at least one percent of its insured shares and deposits. Each participating credit union's account shall be adjusted at least annually to reflect changes in the participating credit union's aggregate insured shares and deposits in accordance with procedures adopted by the guaranty corporation's board of directors.

(c) Membership investment shares of participating credit unions shall be established as pledged assets with appropriate explanatory footnotes on the books and records and in the financial statements of the participating credit unions. The guaranty credit union may utilize all of the assets of the guaranty credit union and accordingly reduce the membership investment shares of all participating credit unions, as required, at the discretion of its board of directors, and utilize such assets in accordance with the powers of the guaranty credit union as set out in these rules.

*Source: The provisions of this §95.304 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

#### **§95.305. Audited Financial Statements; Accounting Procedures; Reports.**

(a) A guaranty credit union shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering the fiscal year, within one hundred days after the close of such fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant.

(b) If the opinion of the certified public accountant is other than unqualified pursuant to generally accepted auditing standards, the commissioner shall require the guaranty credit union to take such action as is considered appropriate to permit the removal of such qualification from the opinion.

(c) At a minimum, once every three years the annual audit of the guaranty credit union shall include an actuarial study of the capital adequacy of the credit union.

(d) All of the provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

*Source: The provisions of this §95.305 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224.*

#### **§95.310. Fees and Charges.**

(a) A guaranty credit union shall pay the fees prescribed in Section 97.113 of this title (relating to Operating Fees) in the same manner as any other credit union chartered under the Act.

(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the guaranty credit union.

*Source: The provisions of this §95.310 adopted to be effective March 7, 2007, 32 TexReg 1067; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224.*

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## **Subchapter D. Disclosure for Non-Federally Insured Credit Unions**

### **§95.400. Requirements of Participating Credit Unions.**

(a) Every participating credit union shall give appropriate notice of the insurance status of its accounts printed in a manner acceptable to the commissioner. This notice shall be posted at all public entrances at each office and service facility (excluding shared branching facilities) and continuously displayed at each station or window (excluding automatic teller machines and point of sale terminals) where funds or deposits are normally received. At a minimum, the notice shall clearly and conspicuously disclose the following:

- (1) That members' accounts are insured by an insuring organization;
- (2) The name of the insuring organization;
- (3) The extent of the insuring organization's share and deposit insurance protection;

and

(4) That accounts are not insured or guaranteed by any government or government-sponsored agency.

(b) At the time an account is established, a participating credit union shall provide written notice to its members that the share or deposit account will be cooperatively insured or guaranteed by an insuring organization. The notice shall include a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

(c) The noticed required by paragraph (a) of this section shall also be displayed on a participating credit union's web site home page and any other page where it accepts deposits or opens accounts. The dimensions and font size of the notice required by this paragraph must be of a reasonable size and clearly legible.

(d) Every participating credit union shall also include, in any literature, advertising, or other marketing materials related to joining the credit union, or soliciting funds for a share or deposit account, a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

*Source: The provisions of this §95.400 adopted to be effective March 7, 2007, 32 TexReg 1067; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018; 43 TexReg 7224.*

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