

**CREDIT UNION COMMISSION
MEETING MINUTES
July 14, 2017**

A. CALL TO ORDER - ASCERTAIN A QUORUM – Chair Allyson “Missy” Morrow called the meeting to order at 9:00 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Other members present included, Beckie Stockstill Cobb, Steven “Steve” Gilman, Sherri Merket, Jim Minge, Kay Stewart and Rick Ybarra. Commission Member Yusuf Farran was absent due to health-related issues. Assistant Attorney General Melissa Juarez was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner, Robert E. Etheridge, Deputy Commissioner and Joel Arevalo, Director of Information Technology. Chair Morrow appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**July 3, 2017, TRD#2017005015**). Chairwoman Morrow introduced and welcomed the two new members on the Commission, Jim Minge and Rick Ybarra.

❖ **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Chair Morrow invited public input on matters that were not scheduled items on the agenda for possible future consideration by the Commission. No public comments were received.

❖ **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES** – Chair Morrow inquired if there were any requests or motions to excuse an absence. Mrs. Merket moved to excuse Commission Member Yusuf Farran from the Commission meeting on July 14, 2017. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

B. RECEIVE MINUTES OF PREVIOUS MEETING (March 10, 2017).

The Chair referred the members to the draft minutes of the previous meeting included in the agenda packet. Mr. Gilman moved for approval of the minutes of March 10, 2017 as presented. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

C. COMMITTEE REPORT – Commissioner Evaluation Committee

(a) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve the Commissioner’s FY 2018 Performance Objectives and Goals. Mrs. Merket reported that it was the Committee’s determination that the 2017 Performance Objectives and Goals were still appropriate and, on behalf of the Committee, she moved that the Commission re-adopt the current performance objectives and goals for FY 2018. Coming on a motion of a standing committee, a second was not needed and the motion passed unanimously.

(b) Discussion of the Procedures to be Utilized in the Commissioner’s FY 2017 Performance Review. Mrs. Merket briefly highlighted the procedures to be used as part of the Commissioner’s performance review. No formal action was taken by the Commission.

D. PENDING AND ONGOING MATTERS

(a) Discussion, Consideration and Possible Vote to Take Action on the Repeal of 7 TAC Section 97.104 Concerning Petitions for Adoption or Amendment of Rules. Commissioner Feeney explained that the Commission had previously approved for publication and comment in the *Texas Register* the proposed repeal of Rule 97.104. He noted the Department received one written comment supporting the proposal. Mr. Feeney indicated that Rule 97.104 was being repealed and the statutorily required rule prescribing the procedures for the

submission, consideration, and disposition of a petition to initiate rulemaking would be recreated in a new subchapter in the next agenda item.

After a short discussion, Mr. Minge moved that the Commission adopt the repeal of 7 TAC Section 97.104 as previously published in the *Texas Register*. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration and Possible Vote to Take Action on the Adoption of New Subchapter F of 7 TAC, Part 6, Chapter 97 Concerning Rulemaking. Commissioner Feeney indicated that the Commission had previously approved for publication and comment in the *Texas Register* the proposed new Subchapter F in Chapter 97. He noted the Department received one written comment supporting the proposal. He further explained that the new subchapter would comply with two rulemaking requirements imposed by the Government Code §§2001.021 and 2001.29.

After a short discussion, Mrs. Merket moved that the Commission adopt new 7 TAC Sections 97.500 and 97.501 without changes to the proposed text as published in the *Texas Register*. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC Section 97.105 Concerning Frequency of Examination. Commissioner Feeney indicated that the Commission had previously approved for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 97.105. He noted the amendments would clarify that the annual examination requirement means a credit union must be examined at least once during each twelve-month period; however, the proposal would also provide specific authority for the Department to extend the intervals

between examination effective dates to 18 months without the prior written approval of the Commission.

After a short discussion, Mr. Gilman moved that the Commission adopt the amendments to 7 TAC Section 97.105 without changes to the proposed text as published in the *Texas Register*. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(d) Discussion and Consideration of the Department's FY 2017 Budget and Financial Performance. Commissioner Feeney indicated that for the first nine months of FY 2017, operating income totaled \$3,704,114, which was \$8,405 more than the YTD budgeted amount. He noted that during the same period, the Department spent \$2,703,534 operating the Department, which is approximately \$198,000 less than budget. Mr. Feeney also reported that the new air conditioning units had been installed during the month of June and the carpet replacement project was scheduled to begin on July 21, 2017.

After a brief discussion, no formal action was taken by the Commission.

(e) Discussion and Consideration of Current Status of the State Credit Union System. Deputy Commissioner Etheridge reported that the operating environment for Texas credit unions continues to be good because of a sound Texas economy. He further explained that, in general, Texas credit unions continue to perform well and realize positive loan growth, strong asset quality trends, satisfactory earnings performance and stable net worth positions. However, recent trends reflect a reduction in credit union bottom lines attributed primarily to increased operating costs and provision for loan and lease losses expenses.

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

(f) Discussion and Consideration of Legislative Issues and Activities Related to the 85th Regular Session that may Impact the Department or Credit Unions Under the Department's Jurisdiction. Commissioner Feeney indicated that slightly more than 1,200 passed both chambers of the legislature and were sent to the Governor. He identified several bills that affected credit unions and/or the Department including HB 471, SB 564, HB 1290, HJR 37, and SJR 60. He also suggested that if the voters approve the two noted Constitutional amendments, the Commission may want to consider a special meeting in early 2018 to ensure the necessary modifications to the rules/interpretations are effective as soon as possible after the Propositions become effective.

There was discussion among the members and the Commissioner addressed questions. No formal action was taken by the Commission; however, it was the consensus that, if deemed necessary, the commissioner could adjust the scheduled date for the November regular meeting to facilitate the rulemaking process.

E. NEW MATTERS

(a) Discussion, Consideration and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 6, Chapter 91, Subchapters A (General Rules), B (Organization Procedures), J (Changes in Corporate Status), and L (Submission of Comments by Interested Parties). Commissioner Feeney explained that Section 2001.039, Government Code, requires a state agency to review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. He noted that, at the July 2016 meeting, the Commission approved a plan which establishes a date for the required review of each existing rule. In accordance with that plan, he reported that staff has reviewed Chapter 91,

Subchapters A, B, J, and L, and believes that certain revisions are appropriate and necessary. Mr. Feeney noted that the recommended amendments to certain rules in Subchapters A, B, and J will be presented separately for consideration. He explained that notice of review and a request for comments on these rules was published in the April 21, 2017 issue of the *Texas Register* and that no comments were received.

After consideration of the rules, Mrs. Merket moved that the Commission find that the reasons for adopting the rules in Chapter 91, Subchapters A, B, J, and L continue to exist and that the Commission re-propose and readopt these rules. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations. Commissioner Feeney indicated that as part of the mandatory rule review, staff is recommending certain amendments to Rule 91.101. He noted the proposed amendments would add a new definition for “interactive teller machine” and eliminate two existing definitions for “catastrophic act” and “construction or development loan”. In addition the definitions for “improved residual property”, “loan-to-value ratio”, and “loan and extension of credit” would be expanded to enhance consistency with federal regulations. And finally, he explained that the definition of “office” was modified to include interactive teller machines.

After a short discussion, Mr. Gilman moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.101. Mr. Ybarra seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.115 Concerning Safety at Unmanned Teller Machines. Commissioner Feeney explained that as part of the mandatory rule review, staff is recommending certain amendments to Rule 91.115. He noted that the proposed amendments would reduce regulatory burden by authorizing delivery of the required notice by electronic means in certain circumstances. In addition, the proposed amendments would provide clarification, better readability, and technical corrections.

After further discussion, Mr. Minge moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.115 relating to Safety at Unmanned Teller Machines. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.121 Concerning Complaint Notification. Commissioner Feeney explained that the proposed amendments to Rule 91.121 were a result of the Department's general rule review and were intended to allow the required complaint notice to be in a form that is substantially similar to the prescribed notice. In addition, he noted that the proposed changes would alter the content of the required notice to include the department's facsimile number and email address as well as provide clarification and better readability.

After a short discussion, Mrs. Cobb moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.121 related to complaint notification. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(e) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.205 Concerning Use of Credit Union Name. Commissioner Feeney indicated that the proposed amendments to Rule 91.205 were a result of the Department's general rule review and were being proposed to make it abundantly clear that a credit union is solely responsible for any unauthorized use or infringement on a business trade name. In addition, he noted that the proposed changes would emphasize the need for a credit union to use appropriate due diligence in selecting a credit union name.

After a short discussion, Mr. Gilman moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.205 related to use of credit union name. Mr. Ybarra seconded the motion and the motion was unanimously adopted.

(f) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests. Commissioner Feeney indicated that the proposed amendments to Rule 91.209 were a result of the Department's general rule review and were being proposed to eliminate the specific due date for submission of call reports to avoid any conflict or confusion should the National Credit Union Administration establish a different date for submitting its Form 5300. In addition, he noted that the proposed amendments would provide better clarity and readability.

After a short discussion, Mrs. Stewart moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.209 related to call reports and other information requests. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(g) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.1003 Concerning Mergers/Consolidations. Commissioner Feeney indicated that the proposed amendments to Rule 91.1003 were a result of the Department's general rule review and were being proposed to institute a new requirement for credit unions to include in a merger plan a description of any arrangements providing an increase in compensation or benefits to a board member or senior management employee of the acquiree credit union about the merger/consolidation. He noted the intent of the proposed change was to ensure the merging credit unions have more complete information about financial arrangements that would not otherwise be received if the merger/consolidation was not completed.

Commission Member Minge questioned whether it might not be appropriate to include some type of a threshold for compensation increase that would trigger disclosure. He suggested that he favored some type of cutoff point after which the significance of the compensation becomes relevant to the decision making of the board of directors.

Commission Member Cobb inquired as to existence of any incentives to encourage a person to disclose such financial arrangements.

Commissioner Feeney indicated that the staff proposal focuses simply on transparency and the principle that full disclosure usually results in more informed and better credit union decisions. He noted that if the proposal was adopted the failure to disclose such financial arrangements would be treated in the same manner as any other violation of applicable law.

After a short discussion, it was the consensus of the Commission that a materiality threshold should be incorporated into the language of the proposal. It was suggested that the term “substantial” be inserted in paragraph (d)(1) of the proposal immediately preceding both the term “remuneration” and the phrase “other financial rewards”. It was further suggested that the term “substantial” be defined in paragraph (a) of the proposal to be an amount that exceeds \$1,000.00 in total.

After further discussion, Mrs. Cobb moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.1003 with the suggested modifications and authorize staff to finalize the exact language for the proposed definition of “substantial”. Mr. Minge seconded the motion and the motion was unanimously adopted.

(h) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC Section 91.1010 Concerning Voluntary Liquidations. Commissioner Feeney indicated that new Rule 91.1010 was being proposed to provide guidance to credit unions that are considering a voluntary liquidation of the institution. He noted the intent of the guidelines was to enable the board of directors or liquidating agent to conduct the liquidation of the credit union in a more orderly and expeditious manner and to arrange distribution of the assets to the members without undue delay.

Chairwoman Morrow called a brief recess at 10:15 a.m. to allow the Recording Secretary to change the DVD being used to record the meeting.

Chairwoman Morrow reconvened the Commission at 10:21 a.m.

Commission Member Stewart questioned why the Department would permit a credit union to voluntarily liquidate when such an action may cause at least a portion of members' share/deposits to not be available during the liquidation. She indicated that this inability of members to access their funds would likely impose significant personal hardships on the members and may cast a bad light on the whole credit union industry.

Commissioner Feeney responded that a voluntary liquidation is statutorily authorized and that in some extreme cases it may be the only viable option for a credit union. He did note, however, that it should be incumbent upon a credit union's board of directors, before determining whether a voluntary liquidation is advisable, to carefully consider all factors leading to the proposal and vigilantly consider all other options.

After a brief discussion, it was the consensus of the Commission that it may be necessary to consider some regulatory oversight of the methods and procedures of the membership vote concerning a voluntary liquidation. Since this area was beyond the scope of the proposal before the Commission, staff was directed to develop a proposal, addressing the expressed concerns, for consideration at the next regularly scheduled meeting.

After further discussion, Mrs. Cobb moved that the Commission approve for publication and comment in the *Texas Register* the proposed new 7 TAC Section 91.1010 related to voluntary liquidations. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(i) Discussion, Consideration, and Possible Vote to Approve Both the Department's Operating Plan and Budget for Fiscal Year 2018. Commissioner Feeney reported that Section 16.003 of the Finance Code gives the

Commission the exclusive responsibility for approving the Department's budget. He noted that in accordance with the budget policies and guidelines approved at the Commission's last meeting, staff was presenting for consideration a proposed FY 2018 Current Service Level budget of \$3,890,312. In addition, Mr. Feeney explained that in accordance with the FY 2017-2021 Strategic Plan, staff also encourages consideration of three new initiatives and a replacement/capital improvement plan. He provided a brief explanation of the three initiatives:

Initiative #1-- \$50,000 (Sage Database Conversion) – Commissioner Feeney explained that funding of this capital improvement is necessary to build a hosted solution to manage and report the Department's internal organizational processes, that more closely aligns to agency needs and integrates with the SharePoint Office 365 solution.

Initiative #2 – \$88,026 (Merit Increase Pool) – Commissioner Feeney explained that recognizing and rewarding performance is key for this agency to continued its drive for excellence. He indicated that merit pay helps the Department differentiate between the performance of high and lower performing staff members.

Initiative #3 -- \$35,115 (Secure Data Transfer Portal) – Commissioner Feeney explained that funding of this capital improvement is necessary to build a Secure Data Transfer Portal to enable the Department's examiners and credit unions to share examination-related documents. He noted that the solution would establish a secure and encrypted connection from the Department to Department of Information Resources' Government Cloud allowing file transfers, file access, and file management over a reliable data stream. Commissioner Feeney further explained that most of the cost associated with this initiative (\$32,635) would be recurring annual costs.

After a brief discussion, Mr. Minge moved that the Commission approve the proposed FY 2018 Operating Plan and Budget, with a total budget of \$4,063,453 and 29.5 FTEs. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(j) Discussion, Consideration, and Possible Vote to Take Action on the Staff Proposal to Manage and Control Access to the Credit Union Department Building During Normal Business Hours. Commissioner Feeney explained that Staff would like to implement stronger security measures during business hours to better ensure that the Building is accessed only for authorized purposes. More specifically, he noted that the Department would like the Commission's authorization to reasonably manage and control access to the building in order to maintain the integrity and security of the building to better protect the confidentiality of information stored in the building and to protect staff who work within the building.

After a short discussion, it was the consensus of the Commission to encourage the Department to consider installing security cameras and taking other safety precautions to protect staff who work in the building. Mrs. Merket moved that the Commission authorize the commissioner to reasonably manage and control access to the Credit Union Department Building in a manner which minimizes risks to personal safety and maximizes physical asset and confidential information protection. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

(k) Discussion, Consideration, and Possible Vote to Take Action to Authorize the Commissioner to Negotiate and Participate in an Alternate Joint Supervision Pilot Project with the National Credit Union

Administration. Commissioner Feeney explained that currently there is no specific pilot project but as the Department works to make better use of technology in its examination program, it is critically important to work closely with National Credit Union Administration (NCUA). He noted, however, as the Department has explored these matters with NCUA, it has become apparent that some of the guidance and/or the express expectations of the Commission, related to the examinations of credit unions, impede meaningful negotiations about future supervisory activities. While the commissioner has statutory authority to enter into cooperative or coordinating agreements with NCUA, Mr. Feeney indicated that he was proactively seeking Commission approval to explore any and all options on a test basis, including those that may not be consistent with previous directions.

After a brief discussion, Mr. Gilman moved to authorize the commissioner to negotiate and participate in alternative joint supervision pilot projects with the National Credit Union Administration to facilitate the evolution of features in the examination and supervision program. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

(I) Discussion, Consideration, and Possible Vote to Take Action to Approve Resolutions of Appreciation for Outgoing Commission Members Manuel Cavazos and Gary Tuma. Commissioner Feeney indicated that it is the practice of the Commission to adopt a resolution of appreciation to recognize the service of Commission Members upon the completion of their terms of office.

After a short discussion, Mrs. Merket moved to approve the Resolutions of Appreciation for Outgoing Commission Members Manuel Cavazos and Gary Tuma as presented and directed that a copy of the appropriate resolutions be given

to the former members as a token of the Commission's appreciation. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

(m) Discussion and Consideration of the Chair's Designation of a Vice Chair and Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation). Chairwoman Morrows noted that as stipulated in Commission Policy, the Chair was appointing Sherri Merket as Vice Chair of the Commission. Mrs. Morrow also designated members to serve on the two standing committees. She noted that the minutes should reflect the following appointments:

Rules Committee:

Kay Stewart, Chair
Yusuf Farran, Vice Chair
Steve Gilman
Rick Ybarra

Commissioner Evaluation Committee:

Beckie Stockstill Cobb, Chair
Sherri Merket, Vice Chair
Jim Minge
Designated for Person Appointed to Fill Vacant Position on Commission

After a brief discussion, no formal action was taken by the Commission.

Next Commission Meeting – Chair Morrow reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for November 3, 2017 at 9:00 a.m. in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chairwoman Morrow adjourned the meeting at 11:08 a.m.

Allyson “Missy” Morrow
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library