



CREDIT UNION COMMISSION MEETING

Credit Union Department Building

914 East Anderson Lane

Austin, Texas

August 27, 2021

9:00 a.m.

AGENDA

This meeting of the Texas Credit Union Commission will be held at the Credit Union Department Building and is open to the public. Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas related to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, this meeting of the Texas Credit Union Commission will also be held virtually by two-way audio or video conference, as authorized under Texas Government Code Sections 551.125 and 551.127. Those wishing to attend the meeting virtually will find a link to the meeting on the Department's webpage at www.cud.texas.gov on the day of the meeting. Members of the public wishing to provide testimony through virtual means will need to register through email with isabel.velasquez@cud.texas.gov. Members of the public may also participate via phone using 1-936-213-5778 (Toll) Conference ID: 190 998 381#.

An electronic copy of the agenda is now available at www.cud.texas.gov under Credit Union Commission, Commission Meetings, along with a copy of the meeting materials. A recording of the meeting will be available after September 10th, 2021. To obtain a recording, please contact Isabel Velasquez at 512-837-9236.

Public participants must email isabel.velasquez@cud.texas.gov in advance of the meeting if you would like to provide public comment through the video conference. When the Board reaches the public comment item, the Chairperson will recognize you by name and give you an opportunity to speak.

Public comment on any agenda item or issue under the jurisdiction of the Credit Union Commission is allowed. Unless authorized by a majority vote of the meeting quorum, the comments of any persons wishing to address the Commission will be limited to no more than ten (10) minutes.

The Commission may discuss and/or take action regarding any item on this agenda

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Adjournment

Note: The Credit Union Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

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

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

A

CALL TO ORDER

TEXAS CREDIT UNION COMMISSION MEMBERS

- *Yusuf E. Farran, Chair*
- *Elizabeth L. "Liz" Bayless*
- *Karyn C. Brownlee*
- *Beckie Stockstill Cobb*
- *Steven "Steve" Gilman*
- *Sherri B. Merket*
- *Jim Minge -- ABSENT*
- *David F. Shurtz*
- *Kay Rankin-Swan -- ABSENT*

Legal Counsel

- *Melissa Juarez*

Staff

- *John J. Kolhoff*
- *Robert W. Etheridge*
- *Joel R. Arevalo*
- *Isabel Velasquez*

FUTURE CREDIT UNION COMMISSION MEETING DATES

Friday, November 5, 2021

Friday, March 4, 2022

Friday, June 3, 2022

All regular scheduled meetings will begin at 9:00 a.m. unless notified differently.

If anyone has conflicts with the proposed dates, please contact Isabel Velasquez at (512) 837-9236.

B

CREDIT UNION COMMISSION MEETING MINUTES

Draft copies of the minutes for the June 4, 2021 meeting, and the corresponding follow-up action report, are located under **Tab B**.

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

RECOMMENDED MOTION: I move that the minutes of the Commission's regular meeting of June 4, 2021 be approved as presented.

CREDIT UNION COMMISSION MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane, Austin, Texas
and via videoconference
June 4, 2021

A. CALL TO ORDER -- Chair Yusuf Farran called the meeting to order at 9:01 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, Liz Bayless, Karyn Brownlee, Beckie Stockstill Cobb, Steven "Steve" Gilman, Sherri Merket, Jim Minge, David Shurtz, and Kay Swan. Assistant Attorney General Melissa Juarez was in attendance via videoconference to serve as legal counsel. Representing the Department staff were John J. Kolhoff, Commissioner, Robert E. Etheridge, Deputy Commissioner, and Director of Information and Technology Joel Arevalo. Chair Farran appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (May 21, 2021 TRD#2021003037).

❖ **GENERAL PUBLIC COMMENT --** Chair Farran 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.

B. MINUTES OF PREVIOUS MEETING (March 5, 2021) -- The Chair referred the members to the draft minutes of the previous meeting included in the agenda packet and asked for any proposed edits. Hearing none, the chair asked for a motion to approve the minutes. Mr. Gilman moved for approval of the minutes of March 5, 2021 as presented. Mrs. Merket seconded the motion, and the commission carried the motion unanimously.

C. DEPARTMENT'S ACTIVITIES RELATED TO COVID-19 --

Commissioner Kolhoff reported that the Department provided the information included in the packet to the legislature, both the house and the senate committees. We are basically out of the COVID scenario from our aspect, and from an operational standpoint, our office is manned with all staff back in the office at the same time. Our examiners are starting to phase in field work and at the same time moving towards some more remote examination presence so that we take up the least amount of space at the institutions as possible while doing our jobs. Mr. Kolhoff applauded both the examiners and institutions for doing such a great job together during these trying times.

After a brief discussion, Commission took no action.

D. DEPARTMENT'S FY 2021 BUDGET & FINANCIAL

PERFORMANCE – Commissioner Kolhoff reported that in 2020 the Commission adopted a strategic plan for Fiscal Years 2021-2025. The \$4.3 million FY 2021 budget approved by the Commission in August 2020 includes the maintenance and operating and capital improvement budget in support of the Strategic Plan. At the end of the eight months, total expenditures were \$2.298 million or approximately 17% less than budgeted projections of \$2.781 million. Almost all lines performed below budgeted levels apart from additional technology upgrades costs for FY 2021. Mr. Kolhoff further reported that the remediation of the water intrusion issue on the west side of the building has been addressed on the external wall of the building and that final finish work on the interior is complete. The full costs associated with this remediation project approximated \$20,000 and are now reflected in the financial information. Mr. Kolhoff indicated that the second operating fee billing was completed February 25, 2021, and all payments have been received. The 2021 second billing was adjusted 45% with \$1.125 million returned to the industry. The adjustment represents \$465,000 of unspent appropriated funds from the FY 2020 budget and \$660,000 excess funding provided by TAC 97.113 over the FY 2021

approved budget. The unspent funds from the FY 2020 budget predominately represent travel related savings as a result of the pandemic and personnel savings due to vacancies, retirements, and a request from the Governor's Office to reduce operating costs. Furthermore, the funding provided in excess of the approved 2021 budget represents the fixed nature of the schedule provided by 7 TAC 97.113 and the inflated June 30, 2020 asset position of the industry due to COVID-related economic measures and a flight to safety.

After a brief discussion, the Commission took no action.

E. DEPARTMENT'S OPERATING PLAN AND BUDGET FOR FISCAL YEAR 2022 – Commissioner Kolhoff explained that consistent with the Budget Assumptions approved by the Commission, the following pages detail a proposed budget for FY 2022 of \$4,894, 832, which represents a 13.63% increase from the FY 2021 budget. The proposed budget includes strategic-initiative funding for the costs related to establishing an internal audit function (\$62,000); compensation program performance and equity-based amendments (\$126,267); establishing a General Counsel position (\$161,622); and enhancing the examiner training program (\$15,000). The budget also includes capital improvement funding of \$271,000 to replace the roof and \$30,000 to maintain our internal network infrastructure. Furthermore, removing the impact of funding the new roof, the internal audit function, and the general counsel position, the FY 2022 proposed budget represents only a 2.1% increase over the FY 2021 budget. Mr. Kolhoff reminded the Commission that last year's approved budget represented a 3.1% decrease from the prior year to respond to Governor Abbott's requested budget reviews during the pandemic.

❖ **A member of the public, Melodie Durst, Executive Director, Credit Union Coalition of Texas** shared that the Coalition has received overwhelming positive feedback from credit unions regarding conducting remote examinations and that the Coalition supports the capital improvements and budget as presented today.

After a lengthy discussion, Mr. Minge moved that the Commission approve the proposed FY 2022 Operating Plan and Budget, with a total budget of \$4,894,832 and 31 FTEs. Mrs. Brownlee seconded the motion, and the commission carried the motion unanimously.

F. PROPOSED REVISIONS TO COMMISSION POLICIES MANUAL —

Commissioner Kolhoff reported that the following amendments to the Commission's Policy Manual are recommendations by the Department to address the recommendations from the Sunset Review Commission staff as outlined in SB707. These changes include the addition of a standing Audit Committee under Section X, Subsection C and the amendments to Section VIII with Appendix B related to the implementation of a training manual with annual acknowledgement by the Commission members.

After a short discussion, Mrs. Cobb moved that the record reflect that the Commission reviewed its policies manual and approved the proposed changes as recommended by staff. Mrs. Bayless seconded the motion, and the commission carried the motion unanimously.

G. NEW COMMISSION MEMBER ORIENTATION AND TRAINING

MANUAL – As recommended by the Sunset Review Commission staff members, SB707 includes changes to the Texas Finance Code which requires the development of a commission member training manual. The statutory changes require commission members to annually review and acknowledge receipt of the training manual. At the end of the meeting, signed acknowledgement forms were filed in each commission member personal file.

After a brief discussion, the Commission took no action.

H. STATE CREDIT UNION SYSTEM – Commissioner Kolhoff indicated the information presented in the meeting packet is based on the last financial numbers available and that Mr. Etheridge would proceed with a more detailed report on the state credit union system. Mr. Etheridge reported that the unemployment levels in the United States and Texas have consistently declined since April 2020 but remain 1.5 to 2.0 times pre-pandemic levels. At the state level, Texas has experienced similar reductions with unemployment rates declining from a high of 13.5% in April 2020 to a September level of 8.3% to 6.9% as of March 2021. Through the eight-month period ending March 2021, the number of unemployed in the U.S. has declined 58% to 9.7 million from April 2020 high of 23.1 million. Overall, Texas credit unions have performed consistently during the pandemic, and the industry remains safe and sound. While some credit unions have experienced a decline in financial performance, most have continued to recognize strong trends throughout the pandemic. The first quarter earnings performance data for Texas credit unions is strong and reflects higher net income levels when compared to the last three quarters. Most credit unions are generating enough earnings to cover operating costs and maintain capital strength despite extreme deposit and asset growth tied to an influx of stimulus deposits and members' flight to safety. The rapid asset growth has significantly impacted net worth ratios for Texas charters, as evidenced by an 82-basis-points decline in average net-worth ratios during the last twelve months to 10.04%. The Department will continue to monitor credit union asset quality, liquidity, and interest-rate risk trends, and will continue to monitor the longer-term impact of the February storm, as well as the COVID-19 pandemic.

After a brief discussion, the commission took no action.

I. SUNSET REVIEW – Commissioner Kolhoff reported that after the background included in the meeting packet went out, he was notified that bill, SB 707, has passed and is awaiting the Governor's signature.

After a short discussion, the commission took no action.

J. COMMISSIONER SUCCESSION PLAN – Commissioner Kolhoff reported that annually the Commission reviews and approves the Commissioner Succession Plan found within the Commission Policy Manual. The plan provides the process under which the Commissioner Evaluation Committee and Commission will move forward if the Commissioner becomes incapacitated or unavailable.

After a brief discussion, with no changes, the commission took no action.

K RESTROOM REMODEL – Commissioner Kolhoff pointed out that the Department contracted Texas Facilities Commission (TFC) to perform an ADA inspection relating to the restrooms. Most deficiencies identified included changing the height of fixtures/mirrors/signage and stalls height and wide as well as completely moving the men's restroom door 10' or moving the south wall 10' into the breakroom. Either would be a substantial construction project. Given the continuing development of the roof construction project it has been decided to wait completion of the roof project before moving forward with this project.

After a short discussion, it was the consensus of the Commission to just wait on moving forward with this project, and the Commission took no action.

L. FRONT ENTRANCE EXTERIOR REPAIR – Commissioner Kolhoff explained that the landscaping and earthworks at the front of the building have deteriorated with several posts breaking loose and becoming unanchored. This creates a potential for injury if the earth wall breaks away further. The February winter storm permanently destroyed a significant portion of the plants within the landscaping. The Department is seeking approval to redistribute \$11,000 of the FY 2021 budget savings from travel-related costs to address these repairs, using current-year allocated funds.

After a short discussion, Mrs. Bayless moved that the Commission approve \$11,000 of funds appropriated to cover FY 2021 travel costs be allocated toward repairs and maintenance to address the landscaping repairs at the front of the building. Mrs. Cobb seconded the motion, and the commission carried the motion unanimously

M. RULEMAKING MATTERS – Chair Farran reported that there were numerous formal rule recommendations to the Commission and suggested grouping the first four items into one motion. The Department received no comments on the notice of intention to review. There being no objection, the Commission considered the following:

(a) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter A (General Rules), Sections 91.101, 91.103, 91.104, 91.105, 91.110, 91.115, 91.120, 91.121 and 91.125, and readoption of rules.**

(b) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter B (Organization Procedures), Sections 91.201, 91.202, 91.203, 91.205, 91.206, 91.208, 91.209 and 91.210, and readoption of rules.**

(c) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter J (Changes in Corporate Status), Sections 91.1003, 91.1005, 91.1006, 91.1007, 91.1008 and 91.1010, and readoption of rules.**

(d) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter L (Submission of Comments by Interested Parties), Sections 91.3001 and 91.3002, and readoption of rules.**

After a short discussion, Mrs. Merket moved that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 91, Subchapters A, B, J, and L** continue to exist and that the Commission readopt these rules. Mr. Minge seconded the motion, and the Commission carried the motion unanimously.

(e) Adoption of New Rule 7 TAC, Part 6, Chapter 91, Subchapter H (Purchase of Assets and Assumption of Liabilities), Section 91.809.

Commissioner Kolhoff indicated that the Commission had previously approved for publication and comment in the *Texas Register* the proposed new Rule 91.809. No comments were received on the proposed amendments to the rule. He further explained the proposed new rule will outline the authority of credit unions to initiate programs of purchasing loans or assuming an assignment of deposits, shares, or liabilities from any credit union, another financial-type institution, or any successor in interest to such an entity. The rule further outlines the requirement to seek Commissioner approval on certain transactions of this type and clarifies the approval application process.

After a brief discussion, Mrs. Brownlee moved that the Commission adopt new 7 TAC, Part 6, Section 91.809 without changes to the proposed text as published in the *Texas Register*. Mrs. Cobb seconded the motion, and the Commission carried the motion unanimously.

N. Designation of a Vice Chair and Appointments to the Commission's three Standing Committees (Rules, Commissioner Evaluation and Audit). Chair Farran noted that as stipulated in Commission Policy, the Chair was reappointing Sherri Merket as Vice Chair of the Commission. Mr. Farran also designated members to serve on the three standing committees. He noted that the minutes should reflect the following appointments:

Commissioner Evaluation Committee

Karyn Brownlee, Chair
Sherri Merket, Vice Chair
Kay Swan
David Shurtz

Rules Committee

David Shurtz, Chair
Liz Bayless, Vice Chair
Beckie Stockstill Cobb
Steve Gilman

Audit Committee

Jim Minge, Chair
Kay Swan, Vice Chair
Liz Bayless
Karyn Brownlee

After a short discussion, the Commission took no action.

O. Future Commission Meetings: Agenda Items, Arrangements, and Dates.

Chair Farran reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for August 27, 2021 at 9:00 a.m., in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chair Farran adjourned the meeting at 12:03 p.m.

Yusuf E. Farran
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

FOLLOW-UP ACTION REPORT

CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 08-09-2021)
<u>June 4, 2021</u>		
7 TAC, Part 6, Chapter 91 Subchapter H, New Section 91.809	Published in <i>Texas Register</i> as adopted new rule.	Published in <i>Texas Register</i> on 06/18/2021
7 TAC, Part 6, Chapter 91 Subchapter A, General Rules Sections 91.101, 91.103, 91.104, 91.105, 91.105, 91.110, 91.115, 91.120, 91.121 and 91.125	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 06/18/2021
7 TAC, Part 6, Chapter 91 Subchapter B, Organization Procedures Sections 91.201, 91.202, 91.203, 91.205 91.206, 91.208, 91.209 and 91.210	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 06/18/2021
7 TAC, Part 6, Chapter 91 Subchapter J, Changes in Corporate Status Sections 91.1003, 91.1005, 91.1006, 91.1007, 91.1008, and 91.1010	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 06/18/2021
7 TAC, Part 6, Chapter 91 Subchapter L, Submission of Comments by Interested Parties Sections 91.3001 and 91.3002	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 06/18/2021

C

DEPARTMENT'S FY 2021 BUDGET FINANCIAL PERFORMANCE

C. Discussion and Consideration of the Department's FY 2021 Budget and Financial Performance.

BACKGROUND: In 2020 the Commission adopted a strategic plan for Fiscal Years 2021-2025. The \$4.3 million FY 2021 Budget approved by the Commission in August 2020 includes the maintenance and operating budget and capital improvement budget in support of the Strategic Plan.

The following report highlights the Department's FY 2021 financial results for the period ending July 31, 2021. At the end of the eleven months total expenditures were \$3.190 million or approximately 17% less than budgeted projections of \$3.867 million. Almost all lines performed below budgeted levels apart from maintenance costs for FY 2021.

The remediation of the water intrusion issue on the west side of the building has been addressed on the external wall of the building and final finish work on the interior is complete. The full costs associated with this remediation project approximated \$20,000 and are now reflected in the financial information.

Additional repairs were initiated to address deterioration of the landscaping walls at the entrance of the building and to replace plants that were killed by the extended period of freezing temperatures in February. The Commission approved the allocation of the approximate \$11,000 costs for this project at the June 2021 Commission meeting.

The unspent funds from the FY 2021 budget predominately represent travel related savings as a result of the pandemic and personnel savings due to vacancies.

RECOMMENDED ACTION: No action is anticipated.

Credit Union Department
BY 2021 Budget Analysis
For the Period Ended 7/31/21

	BY 2021 Budget	BY 2021 YTD Budgeted	BY 2021 YTD Actual	Budget Variance	Percent of YTD Budget
REVENUES:					
Operating Income					
Operating Fees	\$4,307,682	\$4,307,682	\$3,876,539	(\$431,143)	90%
Out-of-State Branch Fees	\$0	\$0	\$9,000	\$9,000	100%
Examination Fees	\$0	\$0	\$0	\$0	
Application Fees	\$0	\$0	\$500	\$500	
Penalties	\$0	\$0	\$200	\$200	
Other	(\$51,250)	(\$51,250)	(\$51,250)	\$0	
Operating Income Subtotal	\$4,256,432	\$4,256,432	\$3,834,989	(\$421,443)	90%
Interest Income (Operating Acct)	\$0	\$0	\$386	\$386	
Interest Income (Contingency Acct)	\$0	\$0	\$175	\$175	
TOTAL REVENUES - FUNDS AVAILABLE TO COVER EXPENDITURES	\$4,256,432	\$4,256,432	\$3,835,551	(\$420,881)	90%
EXPENDITURES:					
Personnel Expenses:					
Salaries and Wages	\$2,607,448	\$2,352,211	\$2,156,409	\$195,801	92%
Employee Benefits	\$856,646	\$785,259	\$708,391	\$76,868	90%
Total Personnel Expenses	\$3,464,094	\$3,137,470	\$2,864,800	\$272,669	91%
Travel Expenses:					
In State					
Examinations			\$24,314		
Training/Conferences			\$2,983		
Meetings			\$1,129		
Public Forums			\$0		
Other			\$472		
Total In-State	\$369,894	\$339,069	\$28,898	\$310,171	9%
Out-of-State	\$24,000	\$22,000	\$0	\$22,000	0%
Commission	\$14,500	\$13,292	\$3,438	\$9,854	26%
Total Travel Expenses	\$408,394	\$374,361	\$32,336	\$342,025	9%
Other Operating Expenses:					
Communication/Utilities	\$49,471	\$45,348	\$44,397	\$952	98%
Professional Services/Fees	\$151,790	\$139,141	\$101,411	\$37,729	73%
Supplies/Materials	\$71,070	\$65,148	\$43,925	\$21,222	67%
Printing and Reproduction	\$2,204	\$2,020	\$113	\$1,908	6%
Repairs/Maintenance	\$11,865	\$10,876	\$30,427	(\$19,551)	280%
Rentals and Leases	\$6,725	\$6,165	\$3,382	\$2,782	55%
Other Operating	\$90,819	\$86,817	\$69,327	\$17,490	80%
Total Other Operating Expenses	\$383,944	\$355,515	\$292,983	\$62,533	82%
TOTAL EXPENDITURES	\$4,256,432	\$3,867,346	\$3,190,120	\$677,226	82%
REMAINING FUNDS TO COVER EXPENDITURES (Actuals)			\$645,431		

D

STATUS OF THE STATE CREDIT UNION SYSTEM

D. Status of the State Credit Union System.

BACKGROUND: While the United States and Texas economies continue to experience challenges due to the COVID-19 pandemic, overall economic trends continue to reflect improvement. According to the U.S. Bureau of Labor Statistics, unemployment levels in the United States have declined from a high of 14.7 percent in April 2020 to a level of 5.4 percent at month-end July 2021. During July alone, the number of unemployed declined by 782,000 to 8.7 million. However, the number of unemployed remains 3.0 million above the pre-pandemic level of 5.7 million in February 2020. At the state level, Texas lost 1.4 million jobs in the Spring of 2020 due to COVID and the unemployment level rose to a record high of 12.9 percent in April 2020, when Texas lost 1.4 million jobs and sales tax revenue of approximately \$2 billion. However, by May of 2021 there were strong signs of a recovery, as 1 million jobs and 1.6 billion in tax revenues had been regained.

While current unemployment in the United States and Texas remains higher than levels experienced during the Summer of 2020, the recovering trends indicate that the United States and Texas economies are rebounding well. However, the continuation of economic recoveries at both the state and national level may hinge, to some extent, on the impact(s) of new variants of COVID and the ability to control/limit the spread of such.

Overall, Texas credit unions continue to perform well and are safe and sound. While there remain a few credit unions that have experienced deterioration with their financial performance, most have shown a strengthening of their financial condition. Second quarter 2021 earnings performance data for Texas credit unions reflects that high levels of net income have been generated which are sufficient to cover operating costs and build net worth levels. However, the biggest challenge for credit unions has been their ability to control asset growth (driven by stimulus deposits), to prevent a dilution of their net worth ratios. While net worth ratios for credit unions declined significantly during 2020 (from 11.11 percent of 10.36 percent) due to rapid asset growth outpacing net worth growth, net worth ratios for Texas credit unions during 2021 have remained relatively stable and are at 10.21 percent for the first half of the year. Moving forward, it remains imperative for the Department to continue to work collaboratively with Texas charters to safeguard the financial interests of millions of Texans

and work cooperatively with our credit unions as they continue to encounter any challenges associated with the pandemic.

INDUSTRY STATUS: At **June 30, 2021**, there were **175** state-chartered credit unions in Texas, down two charters from the previous twelve months. Assets in these credit unions totaled **\$54.22 billion**, an increase of **\$5.60 billion** since **June 30, 2020**, for an annualized growth rate of **11.5 percent**. The average net worth ratio is **10.21 percent**, down 15 basis points from the **10.36 percent level** at **June 30, 2020**.

Loans for Texas chartered credit unions totaled **\$35.53** as of **June 30, 2021**. This is an increase of **\$2.11 billion** since **June 30, 2020**, for an annualized growth rate of **6.3 percent**.

Shares for Texas chartered credit unions totaled **\$47.40 billion** as of **June 30, 2021**. This is an increase of **\$5.29 billion**, or **12.6 percent** since **June 30, 2020**.

Texas chartered credit unions average loan delinquency ratio has declined significantly, to **0.52 percent** as of **June 30, 2020**, compared to a ratio of **0.70 percent** as of **June 30, 2020**.

At **June 30, 2021**, **25** state-chartered credit unions (18 less than the same period from a year ago) reported year to date net operating losses of **\$2.97 million**; while the remaining **150** credit unions reported aggregate net income of **\$283.34 million**. A breakdown of credit unions with positive earnings performance, by asset category, is as follows:

Assets Size	# of CUs	# Profitable	% Profitable (6-30-2021)	% Profitable (12 mos. ago)	% Profitable (24 mos. ago)
\$1 Billion and Over	15	15	100%	92%	100%
\$500 to \$999.9 Million	16	15	94%	64%	100%
\$250 to \$499.9 Million	14	14	100%	79%	100%
\$100 to \$249.9 Million	25	23	92%	92%	100%
\$50 to \$99.9 Million	22	21	95%	82%	96%
\$10 to \$49.9 Million	48	38	79%	76%	84%
Under \$10 Million	35	24	69%	55%	76%
Totals	175	150	86%	76%	90%

PROBLEM INSTITUTIONS: As of **June 30, 2021**, there were **16** credit unions assigned a CAMELS rating of 3 or higher, compared to **24** credit unions at **June 30, 2020**. Credit unions in this category are monitored through a combination of off-site monitoring, regular on-site or remote contacts, and ongoing reviews for compliance with outstanding Documents of Resolution and other supervisory agreements or orders.

ENFORCEMENT ISSUES: As of **June 30, 2021**, the Department had the following administrative sanctions outstanding:

Dividend Restrictions	0
LUAs	0
Determination Letters	0
Conservatorships	1
Cease and Desist	3

CHARTERING ACTIVITY

New Charters*	0
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*Since last commission meeting

RECOMMENDED ACTION: No formal action is anticipated.

E

REVIEW OF PROPOSED INTERNAL AUDITOR
(RFP)

E. Proposed Internal Auditor Request (RFP)

BACKGROUND: As part of the sunset review process, a recommendation was made asking the Department to initiate an internal audit program that exceeds statutory requirements for an Agency of the Department's size and nature. Department management and the Commission agreed to implement a program and formed an Audit Committee, whose first meeting was held in June 2021. The Audit Committee has been working with Commissioner Kolhoff to initiate the required procurement process including the development of an Acquisition Plan and Request for Proposal for Performance to solicit bids from vendors who could provide such services.

RECOMMENDED ACTION: The Department requests that the Commission approve and adopt the Request for Proposal.

RECOMMENDED MOTION: I move that the Commission approve the Request for Proposal to solicit bids from appropriately qualified vendors.



**REQUEST FOR PROPOSAL
TO PERFORM
INTERNAL AUDITING SERVICES**

Credit Union Commission

**914 East Anderson Lane
Austin, Texas 78752**

RFP 469-22-001

**Proposal Due Date: October 1, 2021
Proposal Due Time: 3:00 pm (Central Time in Austin, Texas)
Posting Date: August 16, 2021**

Pursuant to the Provisions of the Texas Government Code Title 10 Subtitle D §§ 2156.121 – 2156.127, sealed proposals will be received until the date and time established for receipt. After receipt, names, prices and other proposal details may only be divulged after award of a contract, if a contract is awarded. The award notice will be posted to the electronic state business daily (ESBD) at <http://www.txsmartbuy.com/sp>.

Pursuant to § 2155.131 of the Texas Government Code and 34 TAC § 20.82, the Credit Union Department (or, "the Agency") has been delegated requisite authority to conduct this Request for Proposal (RFP) and to award a contract for the purposes stated herein.

All proposals shall become the property of the CUD.

All addenda to or clarification of this solicitation shall be posted on the ESBD.

Contractor understands and agrees that no public disclosures or news releases pertaining to this RFP, negotiations, subsequent award, or any results or findings based on information provided or obtained to fulfill requirements of this RFP shall be made without prior written approval of the Agency as defined below.

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REQUEST FOR PROPOSALS TO PERFORM INTERNAL AUDITING SERVICES

SECTION I – INTRODUCTION AND PURPOSE

1.1 SCOPE.

The Credit Union Commission of Texas (“**Commission**”), acting by and through the Credit Union Department, seeks proposals from qualified firms (“**Respondent**”) to perform internal auditing services for the Commission’s supervision of the Credit Union Department (or, “**the Agency**”), in accordance with the specifications contained in this Request for Proposal (“**RFP**”).

1.2 BACKGROUND.

The Commission is a nine-member governing body that supervises the Credit Union Department, a self-directed and semi-independent agency under Texas Finance Code Chapter 16. The Commission is the policy-making body for the Agency authorized to approve the Agency’s budget under Finance Code §§ 16.001(2) and 16.003(a). The Commission is implementing a recommendation by the Sunset Advisory Commission to employ an internal auditor to perform internal audit services for and facilitate Commission oversight over the Agency. Although Finance Code § 16.004 provides for the State Auditor to contract with the Agency to conduct audits, the State Auditor has authorized the Commission and the Agency under Texas Government Code § 321.020 to issue this RFP to employ a private internal auditor to perform internal auditing services. The Agency has the authority to enter into contracts for administration of the Agency’s affairs and attainment of the Agency’s purposes under Finance Code § 16.006. For purposes of Texas Government Code § 2254.002, this RFP is a solicitation for proposals for professional services, as internal auditing services are services within the scope of the practice of accounting, as defined by state law.

The major functions and responsibilities of the Credit Union Department are:

Chartering, regulation, supervision, and/or examination of:

- State-chartered credit unions
- Interstate fields of membership of foreign credit unions within Texas
- Foreign credit union offices

For fiscal year 2022, beginning September 1, 2021 and ending August 31, 2022, the Agency’s total budget is \$4,894,832 and the Full Time Equivalent (“**FTE**”) estimate for its staff is 31. See the Agency’s financial reports included in the meeting packets found at <https://cud.texas.gov/committees/meeting-minutes>. The organizational chart is included as Attachment C.

The Agency is responsible for its administrative support services. Previous internal audit reviews were conducted exclusively by other state agencies including the Texas State Auditor’s Office, Comptroller of Public Accounts and the State Office of Risk Management and are publicly available from their respective websites.

This is the first internal auditor contract to be awarded through an RFP as a response to a recommendation from the Sunset Advisory Commission for Fiscal Year 2022. The contract can be renewed for up to three one-year terms.

Further information regarding the histories and operations of the Commission and the Agency may be found at the Credit Union Department's website: <https://cud.texas.gov/>. Archived Audit Committee and Commission meeting packets are included on the Commission website at: <https://cud.texas.gov/committees/meeting-minutes>. The Audit Committee was formed in June 2021 to initiate this internal audit program.

1.3 CONTRACT TERM.

Original Term: The services requested shall be performed for a period beginning November 2021, and ending August 31, 2022, unless terminated earlier by the terms of the Contract awarded pursuant to this RFP. Such Contract shall be valid from acceptance of the proposal, or a subsequent Best and Final Offer, by the selected Respondent by an award letter from the Commissioner of the Credit Union Department.

Option to Renew Contract: The Agency, as directed by the Commission, reserves the right to renew any Contract resulting from this RFP, at their sole discretion, for up to three (3) one (1) year renewal terms, at the Contract rate, or rates, as modified during the term of the Contract, to be evidenced in writing prior to the expiration date of the initial term. The Agency must receive annual authorization from the State Auditor's Office to employ a private internal auditor to perform internal auditing services before the Contract can be renewed.

1.4 COMPENSATION.

The Agency will pay for services performed by the Contractor relating to the Agency's business and accepted by the Agency during the effective term and within the scope of the Contract. However, the Agency will be relieved of any obligation to accept performance or to pay for work performed after the effective date of any termination or for work performed outside the scope of the Contract.

If budget constraints require the Agency to reduce the scope of the engagement, the scope may be eliminated, as internal audit review of the Credit Union Department is not statutorily mandated; or reduced to include minimum requirements of the Texas Internal Auditing Act. Contract fees will be reduced to cover the costs of only the actual work performed.

1.5 MODIFICATIONS AND AWARD.

The Commission reserves the right to modify the RFP prior to the opening of the proposals. Any addenda or modifications made will be posted on the Electronic State Business Daily (**ESBD**) located at: <http://www.txsmartbuy.com/sp> by the Agency.

The Commission or its Audit Committee reserves the right to request Best and Final Offers (BAFO), which are revisions of the originally submitted proposal(s) following a formal request for provisions of proposal(s) made to selected Respondents.

The Commission reserves the right to award one contract under the terms of this RFP. The award may be made solely at the discretion of the Commission. Any award resulting from this RFP will be posted on the ESBD.

If a Contract is awarded under this RFP, the Agency will issue an internal purchase order referencing the RFP Number and the contract number, if any, as referenced on the Notice of Award. The Contract will consist of the following documents, which shall be construed in the following order of precedence: (a) any Contract entered into between the parties as a result of this RFP, including any addenda, amendments, modifications, or attachments thereto; (b) the Notice of Award, if any; (c) this RFP, including Attachments; and, (d) the successful Respondent's proposal.

The Respondent whose proposal results in a contract with the Agency, as directed by the Commission, is referred to as the Contractor in this RFP.

1.6 REQUIREMENTS AND SPECIFICATIONS.

(a) Specifications: The Commission is seeking a competent, qualified, accounting firm that is a provider of internal auditing services to perform internal auditing services to the Agency, to facilitate Commission oversight over the Agency, and to enable the Commission and the Agency to voluntarily comply with the provisions of Texas Government Code Chapter 2102 § 2102.001 *et seq.*, the Texas Internal Auditing Act, the related Texas Attorney General's Opinion No. JM-1183, and recent recommendation provided by the Sunset Advisory Commission.

(b) Respondent Requirements:

- (1)** The successful Respondent must be able to demonstrate that it can successfully provide the deliverables and services and meets the requirements of Section II – Statement of Work of the RFP.
- (2)** As required by the Texas Internal Auditing Act, the selected Internal Auditor may not assume operational or management responsibilities for the Commission or the Agency.
- (3)** Respondent must comply with all rules, regulations, and statutes regarding purchasing by the State of Texas in addition to the requirements of this RFP.
- (4)** The Respondent agrees to the Agency's Contract Terms and Conditions. (Attachment B)
- (5)** The Respondent's work schedule must allow for regularly scheduled meetings with the Commission and its Audit Committee. The Commission meets at least three times annually in Austin. The Respondent must also allow for meetings and cooperation with auditors at the State Auditor's Office, the Commission, or the Agency.
- (6)** Upon selection and award, the Internal Auditor agrees to sign a non-disclosure agreement to protect against the release of confidential data and a data use agreement to protect against unauthorized use of data.

SECTION II - STATEMENT OF WORK

2.1 SERVICE REQUIREMENTS.

Services shall include, but not be limited to, the requirements contained in this section and in this RFP. **Services set forth that contain the words "must" or "shall" are mandatory and must be performed as specified with no alteration, modification, or exception.** Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the way the services are performed.

(a) Compliance: The Respondent selected as Internal Auditor for the Agency must perform internal auditing services that comply with the Texas Finance Code, other applicable state law, the requirements of this RFP and the Texas Internal Auditing Act. The Texas Internal Auditing Act requires that an internal audit program conform with:

- (1) The Standards for the Professional Practice of Internal Auditing;
- (2) Generally Accepted Government Auditing Standards; and
- (3) The Code of Ethics contained in the Professional Practices Framework as promulgated by the Institute of Internal Auditors.

(b) Internal Auditor Services and Scope of Procedures: The Respondent selected as Internal Auditor shall perform internal auditing services for the Commission and the Agency, to include the following:

- (1) Prepare the 2021 risk assessment of the Agency to ensure reviews of all major systems and controls as specified in the Texas Internal Auditing Act, including:
 - i. Identification of risk factors, inclusive of cybersecurity/IT risks, affecting the Agency's major systems and controls; and
 - ii. Establishment of methodology for assigning risk factors and weights to develop an audit plan that includes a prioritized audit work schedule.
- (2) Complete the annual risk assessment and develop the proposed annual audit plan for the Agency, based on the risk assessment prepared, and identify and recommend priorities for individual audits to be conducted during the year.
- (3) Present the proposed annual audit plan for the Agency, based on the risk assessment prepared, to the Commission or its Audit Committee at its regularly scheduled meeting in November. The audit plan must contain estimated ranges of hours for recommended audits. The Contractor's schedule and priorities for providing services will be as agreed upon with the Agency after the risk assessment.
- (4) Complete all audits as specified in the audit plan and document findings.
- (5) Prepare audit reports of the Agency that conform to the requirements of the Texas Internal Auditing Act to be presented to the Commission or its Audit Committee for approval. All audits are required to be completed and presented to the Commission annually unless expressly requested otherwise by the Agency.
- (6) Prepare an annual audit report of the Agency as required by the Texas Internal Auditing Act. These requirements include:
 - i. A copy of the annual audit plan;
 - ii. A list of audits completed;
 - iii. An explanation of any deviation from the approved annual audit plan;
 - iv. A narrative description of the most significant findings and recommendations for each audit, including a description of material weaknesses found in the internal control system;

- v. A description of the management actions taken in response to the audit findings and recommendations;
- vi. A listing of the audit recommendations from the previous fiscal year's report and an explanation of the status of each recommendation;
- vii. Distribution of all audits and other required reports to applicable state agencies as required by statute;
- viii. A statement of the last date on which an external peer review of the Respondent's internal audit program was conducted;
- ix. A statement that the audit was made in accordance with generally accepted governmental auditing standards; and
- x. A statement as to whether any pertinent information has been omitted because it is deemed privileged or confidential by law, and why.

- (7) Perform additional audits, outside the scope of the approved audit plan for the Agency, as directed by the Commission or its Audit Committee. Compensation for these additional audits will be paid at an agreed upon additional hourly fee as set forth in Respondent's proposal or BAFO.

(c) **Coordination with the State Auditor's Office:** The Respondent selected as Internal Auditor shall perform internal auditing services for the Commission and the Agency in coordination with the risk reviews, audit plans and audit activities conducted by, or for, the State Auditor's Office.

2.2 PROFESSIONAL AND DEVELOPMENT REQUIREMENTS.

Professional certification and development requirements for selection to be the Internal Auditor are as follows:

An accounting firm Respondent must be licensed by the Texas State Board of Public Accountancy (TSBPA). The members of a Respondent firm who are to perform internal auditing services for this engagement must have, as a group, at least an average of three years auditing experience, and be supervised by a CPA licensed by the TSBPA.

While not required, it would be preferable for a Respondent, or members of a Respondent's firm who are to perform internal auditing services for this engagement, to be Certified Information System Auditors, Certified Internal Auditors, or have other related certifications.

Respondent must have a continuing education program for the professional development of its staff that complies with the Standards for the Professional Practice of Internal Auditing.

Respondent must conduct quality assurance reviews in accordance with professional standards and periodically take part in an external peer review conducted in accordance with Rules of the TSBPA, the Standards for the Professional Practice of Internal Auditing, and generally accepted governmental auditing standards. Peer reviews performed under the requirements of the [American Institute of Certified Public Accountants](#) and the Public Company Accounting Oversight Board are also acceptable. Contractor shall submit to formal peer review at least once every three years and shall provide the Commission with a copy of all peer reviews performed during the term of the Contract.

2.3 FINANCIAL SOLVENCY AND INSURANCE REQUIREMENTS.

The proposal must include:

- (a) Respondent's two most current year-end financial statements; and
- (b) Proof of professional liability and workers' compensation insurance coverage.

2.4 SUBCONTRACTORS.

Any planned or proposed use of a subcontractor by Respondent after Contract award must be clearly documented in the proposal. The selected Contractor shall perform the Contract with its own resources

and those subcontractors identified in its proposal. If the Contractor plans, after Contract award, to subcontract all or a portion of the work to be performed to subcontractors not identified in its proposal, Contractor must obtain the prior approval of the Audit Committee of the Commission and the Commissioner of the Agency to be audited using the services of such subcontractors. The Contractor must also transmit to the Commissioner of such Agency for review and prior approval a true copy of the subcontract it proposes to execute with a subcontractor.

The selected Contractor, in subcontracting for any performances specified in this RFP or Contract, expressly understands and acknowledges that the Commission and the Agency will not be liable, in any manner, to any subcontractors of Contractor, and any subcontractors providing services under the Contract must meet the same requirements and level of experience as required of Contractor. Neither this provision nor any subcontract under the Contract shall relieve the Contractor of its responsibility for ensuring the requested services are performed in full compliance with all terms of this RFP and Contract.

2.5 HISTORICALLY UNDERUTILIZED BUSINESSES.

The Agency has adopted the Policy on Utilization of Historically Underutilized Businesses ("**HUBs**") and therefore promotes and encourages contracting and subcontracting opportunities in all state contracting. State agencies are required to make a good-faith effort to assist HUBs in receiving contract awards issued by the state. The term "**historically underutilized business**" is defined in Government Code, § 2161.001(2). See generally, Government Code Chapter 2161 and 34 Texas Administrative Code ("**T.A.C.**") §§ 20.281 – 20.298. Respondent's proposal should note if Respondent's business is currently certified as historically underutilized by the Texas Comptroller's Statewide Procurement Division. If Respondent is not a certified HUB, then its proposal should answer the following questions:

(1) Is Respondent's business minority or woman owned and operated? If so, which? If minority, what category? (2) Is Respondent's business owned and operated by a disabled veteran meeting the requirements of Government Code § 2161.001(3)(A)(vi) ("**Disabled Veteran**")? (3) What percentage of ownership of Respondent's business is minority or woman owned or owned by a Disabled Veteran?

Contractor will be required to report to the Agency, monthly, the identity of each HUB to which Contractor awarded a subcontract, following prior notice to and approval by the Agency of such subcontract, for the purchase of goods or services, and the dollar amount of HUB subcontracting participation in the Contract as provided in Texas Government Code § 2161.122(b) and 34 T.A.C. §20.287(h).

SECTION III - GENERAL INSTRUCTIONS AND INFORMATION

To ensure consideration, all proposals must meet the following conditions. Failure to meet these conditions may result in disqualification of the proposal and the proposal will receive no further consideration. In its proposal, Respondent must: (a) identify any exception to the terms and conditions of this RFP, and (b) suggest alternative language for any such exception. The rejection of any term or condition of this RFP or the inclusion of any additional or alternative language may result in disqualification of Respondent's proposal.

3.1 PROPOSAL SUBMISSION, DATE, AND TIME.

Proposals must be received no later than 3:00 P.M., Central Time (CT), on October 1, 2021. All times are CT and dates are subject to change.

Proposals may be modified or withdrawn at any time prior to the proposal due date. No changes will be allowed after the proposed due date, except for a best and final offer request.

The Commission will not consider a proposal, or modification, or addenda to an original proposal, after the time and date for submitting proposals set out in Paragraph 3.2. The Commission will not consider a late proposal for any reason.

All submitted proposals become the property of the Agency after the RFP submittal deadline date. The submitted proposals and accompanying documentation will not be returned.

By law, the Agency may not disclose any information regarding a proposal until a contract is executed by all parties. Upon award, the Agency will post the contract award notice to the ESBD. Additional copies of proposals **not selected for award** will be destroyed in accordance with the Agency approved records retention policy.

3.2 SCHEDULE OF EVENTS/CRITICAL DATES.

Time is of the essence in making this award. To meet the target date for implementation, the Commission will strictly adhere to the following time schedule for the procurement process. Respondent must be able to meet all requirements to accommodate the Commission's needs identified in this RFP. The schedule is as follows:

SCHEDULE OF EVENTS	DATE
Publication of RFP in the ESBD at http://www.txsmartbuy.com/sp	September 1, 2021
Deadline for Submitting Questions to the Agency, no later than 5:00 pm. (CT)	September 10 2021
Agency's Official Response to Questions (posted on the ESBD)	September 13, 2021
PROPOSALS DUE: 3:00 pm (CT)	October 1, 2021
Evaluation, Process, Oral Presentations, and Negotiations	October 1, 2021 – November 15, 2021
Selection of Contractor	October 1, 2021 – November 15, 2021
Estimated Contract Award Date	At the Commission meeting – November 5, 2021
Beginning Date of Contract	November 15, 2021
Ending Date of Contract	August 31, 2022

The Commission, acting through the Agency, reserves the right to change the dates in the above schedule of events upon written notification to prospective Respondents through a posting of an addendum to the RFP on the ESBD.

It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal. Respondent's failure to check the ESBD periodically will in no way release the Respondent awarded a Contract from having to meet the requirements of addenda, including the payment of any additional costs to meet the requirements of such addenda.

No proposal may be withdrawn after opening time without Commission approval.

3.3 POINT OF CONTACT/INQUIRIES.

Respondents shall direct all inquiries and communications concerning this RFP to the point of contact listed below in writing. The office hours for the point of contact are 8:30 A.M. to 5:00 P.M. (CT), Monday through Thursday. Any person wishing to obtain clarifying information concerning this RFP shall contact:

Cheli Castro – Staff Services Officer
cheli.castro@tud.texas.gov 512-832-4801

All inquiries will result in written responses posted to the ESBD at: <http://www.txsmartbuy.com/sp>.

After award of a contract pursuant to this RFP, Contractor shall communicate with the Staff Services Officer or the Agency employee designated for management of the award.

3.4 IRREVOCABILITY OF THE PROPOSAL.

The proposal is irrevocable for 100 calendar days following the deadline for submitting the proposal set out in Section 3.1. This period in which the proposal is irrevocable may be extended at the Commission's request with the Respondent's written consent.

3.5 STANDARD PROPOSAL REQUIREMENTS.

Proposals that address only part of the requirements contained in this RFP may be considered non-responsive and may be rejected.

The Commission reserves the right to reject all proposals and to negotiate portions thereof, including cost and budget.

The Commission reserves the right to select the best proposal considering the desired outcomes.

3.6 SIGNATURE OF RESPONDENT.

Respondent must sign the proposal and the Execution of Proposal (Attachment A). The proposal will not be accepted without these signed documents. By signing, Respondent or Respondent's legally authorized agent affirms that all statements within the proposal are true and correct. Discovery of any false statement in the proposal is a material breach and shall void the proposal or any resulting contract. Respondent shall also be removed from all vendor or bidder lists maintained by the Agency.

3.7 STATE NOT RESPONSIBLE FOR COSTS OF SUBMITTING THE PROPOSAL.

The Commission and the Agency will not be liable for any costs incurred by Respondent in the preparation or submission of a proposal in response to this RFP and will not reimburse Respondent for any cost related to its proposal. Respondent must bear all expenses related to responding to this RFP and is responsible for any expense related to the preparation and submission of its proposal.

3.8 DISCLOSURE OF PROPOSAL CONTENT.

The Commission will not consider any proposal that bears a copyright. Proposals will be subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request. The proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

If it is necessary for Respondent to include proprietary or otherwise confidential information in its proposal or other submitted information, Respondent must clearly label the proprietary or confidential information. Merely making a blanket claim that an entire proposal is protected from disclosure because it contains confidential or proprietary information is not acceptable and will make the entire proposal subject to release under the PIA. To initiate the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the proposal that are considered by Respondent to be proprietary or confidential must be clearly labeled. Any information which is not clearly identified as proprietary or confidential shall be deemed subject to disclosure pursuant to the PIA. Subject to the PIA, Respondents may protect trade and confidential information from public release.

3.9 CONFLICT OF INTEREST.

Respondent must disclose any existing or potential conflicts of interest. Disclose all contractual or informal business arrangements, including fee arrangements and consulting agreements, between Respondent and the Commission and its members, the Agency, the Agency's staff or any entity that is regulated by the Agency. Disclosure of all relationships with any other Texas state agencies is also required.

Respondent must follow all state and federal laws pertaining to ethics.

Respondent shall make full disclosure of any former employee of the Agency or the Commission who is an agent, consultant, contractor, or employee of Respondent, or of the intent to employ or subcontract with such an individual.

If the circumstances certified by Respondent change, or additional information is obtained by Respondent after submission of its proposal, Respondent agrees to supplement its response under this provision and that Contractor is under a continuing duty to disclose any conflicts of interest throughout the term of any contract resulting from this RFP. Respondent shall submit updated information as soon as reasonably possible upon learning of any change to their affirmation contained in this RFP.

SECTION IV - PROPOSAL FORMAT AND CONTENT

4.1 PROPOSAL FORMAT.

Respondents shall submit one original of the proposal, along with three (3) copies of the proposal. The proposal should include all the documents requested in this RFP. **Failure to meet this condition may result in disqualification of the proposal, and the Respondent shall receive no further consideration.** Respondent shall prepare a proposal that clearly and concisely represents Respondent's qualifications, experience, and capabilities, and cost of providing the services under this RFP. Proposal pages should be numbered and contain an organized, paginated table of contents corresponding to the section, paragraph and pages of the proposal. See Section VII – SUBMISSIONS CHECKLIST.

Proposals must be submitted in hard copy format (one original and three copies) no later than 3:00 pm (CT), October 1, 2021.

Each proposal shall be placed in a separate envelope or package, clearly marked as a **Request for Proposal to Perform Internal Auditing Services RFP 499-22-001**; and be submitted via U.S. Postal Service, Overnight/Express Mail, or hand delivery, addressed as follows:

Credit Union Department
Attn: Cheli Castro, Staff Services Officer
914 East Anderson Lane
Austin, Texas 78752-1699

All proposals shall be submitted no later than 3:00 pm (CT) on the date specified in the Schedule of Events/Critical Dates above in Paragraph 3.2. If submitted at or near the deadline, the Respondent should obtain a time-stamped or marked receipt from the Agency. A U.S. Postal Service (USPS) postmark or round validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on- site time stamp WILL NOT be accepted.

Email, telephone and facsimile proposals will not be accepted.

Respondents are responsible for checking the ESBD for all modification or addenda to this RFP. Receipt of all addenda or modifications to this RFP should be acknowledged by returning a signed copy of each addendum with the submitted proposal.

For hand delivery, please note that the office hours are 8:00 am to 5:00 pm (CT), Monday through Friday.

4.2 PROPOSAL CONTENT.

Contents: Listed below is a summary of all information to be included in a proposal submitted in response to this RFP. The proposal must include this information and all other information requested or required under this RFP. The Commission reserves the right, in the Commission's sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

(a) Respondent Information: Include the following information regarding the Respondent or responding business entity:

- (1) formal name and all assumed names used by the Respondent or Respondent business entity;
- (2) structure of business entity (i.e. partnership, corporation, etc.);
state in which business entity was formed or incorporated;
- (3) physical address and mailing address;
- (4) principal place of business;

- (5) whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes;
- (6) whether Respondent is a Historically Underutilized Business under Government Code Chapter 2161, and the answers to the questions in Paragraph 2.5;
- (7) Respondent's Texas Identification Number, CMBL Vendor ID, or other taxpayer number assigned and used by the Texas State Comptroller
- (8) the name, title, address, telephone number, facsimile number, and e-mail address of Respondent's primary contact; and
- (9) the name of the individual submitting the proposal, as well as the name of any partner, shareholder or owner or other individual with at least 25% ownership of the business entity submitting the proposal, as required by Texas Family Code § 231.006.

(b) Qualifications/Competencies: Describe Respondent's qualifications and ability to deliver the deliverables and services required, including evidence of compliance with all the minimum requirements set out in Paragraph 1.6 and Section II. With this provide:

- (1) Copies of two prior audit reports dated within the last 24 months. Internal audit reports of Texas state agencies are preferred.
- (2) Respondent's experience (within the last 36 months) in providing similar services with emphasis on state government and regulatory requirements, including the nature of the services performed, scope of services or activities, the organization for which the service was performed, and contact names, positions, and telephone numbers for each such organization and for the person at each such organization most knowledgeable about Respondent's performance of services.
- (3) Three (3) references from clients for whom similar services were performed.

(c) List of Key Personnel: The Respondent should include the names, titles, qualifications and experience of Respondent and any of Respondent's personnel (including the project leader) proposed to perform internal auditing services under this RFP and Contract. The roles of the key individuals proposed to work on the engagement should be described as well.

(d) Compensation and Fees: Provide information regarding Respondent's proposed hourly rate(s) or other fees to be charged by Respondent firm members, by job title(s) or expertise level(s), for the internal auditing services. A Respondent may provide different hourly rate(s) or other fees for work performed by different members of the firm, depending on their years of experience and various levels of expertise. Travel reimbursements are prohibited and may not be included in the hourly rates, as a separate line, or otherwise included in the overall compensation.

For each Agency, provide the Respondent's estimated work hours by job title(s) for accomplishing the work, as required by this RFP, the related hourly fee, and the total anticipated hours for completion of the:

- Risk assessment and audit plan;
- Audits (including number) to be performed; and
- Annual report.

Additionally, the Respondent is requested to provide an hourly fee for any additional audits, outside the scope of the approved audit plan for the Agency, as directed by the Commission or its Audit Committee, which may be desired by the Commission.

(e) Conflict of Interest Disclosure: The Respondent shall identify all relationships that might be a conflict of interest or cause an appearance of a conflict of interest. See Paragraph 3.9 and Attachment A for a description of conflicts of interest. Further, the Respondent must disclose any entity for which the Respondent currently performs services that is licensed, registered, or chartered by the Agency.

(f) Proposed Services: The proposal must provide evidence that the Respondent and Respondent's proposed services and deliverables will meet the requirements of the RFP, the Texas Finance Code, the Internal Auditing Act, and any other applicable statutes and rules. Without limitation, the proposal must include how Respondent will prepare and implement the Agency's risk assessment and audit plan, including the procedures and time frames for completion for each of the services outlined in

Section II - Statement of Work for the Commission and each individual Agency.

- (g) **Availability and Adequacy of Resources:** Respondent must provide assurance that its work schedule will allow for regularly scheduled meetings with the Commission or its Audit Committee, as set forth in Paragraph 1.6, and demonstrate that Respondent's staff size is commensurate to this workload and schedule.
- (h) **Information Security Plan:** Respondent must provide information regarding protection of confidential data received from the Agency including identification, transfer, and storage.

SECTION V- EVALUATION OF PROPOSALS

5.1 COMPETITIVE SEALED PROPOSALS.

The Commission may award contract(s) to selected Respondent(s) pursuant to Competitive Sealed Proposals, as authorized by Texas Government Code § 2156.121. As such, the Commission will evaluate Respondent's proposal on a variety of factors in addition to price. The Commission is **not authorized** to conduct public proposal openings or tabulations prior to award of contract(s), pursuant to this RFP.

The Commission reserves the right to award contract(s) without any negotiations and reserves the right to not make an award.

Respondent is strongly encouraged to provide its best price proposal because the Commission makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process. The Commission may limit the number of proposals in the competitive range to a number that will permit efficient competition among Respondents based on proposed pricing and evaluation of the criteria specified in the RFP. The Commission may seek additional information and solicit best and final offers only from those Respondents the Commission determines to be in the competitive range.

Discussions may be conducted with Respondents determined to be reasonably likely to be selected for award, for clarification of a proposal, to ensure full understanding of all terms and conditions of the proposal, and to ensure Respondent understands the requirements of any resulting contract. In conducting these discussions, there shall be no disclosure of any information derived from proposals submitted by another Respondent.

5.2 REVIEW OF PROPOSALS.

Proposals will be opened by the Agency, on behalf of the Commission, at 914 East Anderson Lane, Austin, Texas 78752-1699.

The Agency, the Audit Committee of the Commission and the Commission will begin review of proposals as soon as it is practical after receipt. In the Commission's sole and absolute discretion, Respondent may be asked to provide an oral presentation of its proposal. If applicable, proposals will be rated again following oral presentations.

5.3 EVALUATION CRITERIA.

Proposals will be selected based on best value considerations to the state, including the ability of Respondent to carry out all the requirements contained in this RFP. Respondent who is in default or otherwise not in good standing under any other current or prior contract with the State of Texas or the Agency at the time of selection will not be eligible for an award under this RFP. The Commission will base its selection on, among other things, demonstrated competence, qualifications of the Respondent, past performance by Respondent, and proposed budget and cost. All state agencies report unsatisfactory vendor performance on purchases over \$25,000 to the Texas Comptroller of Public Accounts. Agencies report satisfactory and exceptional vendor performance to assist the agency and the state in determining best value. In accordance with Texas Government Code §§ 2155.074 and §2155.075, vendor performance may be used as a factor in contract awards. A Respondent with a vendor performance grade of less than a "C" is automatically disqualified.

Criteria upon which the Commission will evaluate Respondent's proposal include, but are not limited to, Respondent's pricing, processes, products, and services. Proposals will be evaluated and scored in accordance with the criteria set forth below.

Following are the evaluation criteria and the total number of possible points for each category:

	CATEGORIES	POSSIBLE POINTS
A	Demonstrated experience, competence, qualifications, and capability to perform internal auditing services as specified.	50
B	Demonstrated ability to perform internal auditing services on a timely basis.	10
C	References and other indicators of probable performance under the Contract, such as past performance, responsibility, financial resources, and ability to perform.	15
D	Fairness and reasonableness of proposed hours and fees based on work to be performed.	25
	Total	100

An award will be made to Respondent that meets all criteria required by the Commission and which the Commission determines, in its sole and absolute discretion, represents best value for the state, based on the factors and evaluation criteria identified in this Paragraph.

5.4 EVALUATION OF PROPOSALS.

Submission of a proposal indicates Respondent's acceptance of the evaluation process set forth in this RFP and Respondent's acknowledgement that subjective judgments may be made by the Commission in the evaluation process.

5.5 DISCUSSIONS WITH RESPONDENT.

The Commission may conduct discussions with any Respondent that appears to be eligible for award, pursuant to the selection criteria set forth in this RFP. In conducting the discussions, the Commission will not disclose information derived from proposals submitted by competing Respondents.

5.6 BASIS OF AWARD.

The Commission will make an award, if any, based on best value considerations to the state, including demonstrated competence, experience, knowledge and qualifications, as well as the proposed fee for all or each portion of the deliverables, goods, services, or work requested under this RFP, as determined by the Commission, in its sole and absolute discretion. By this RFP, however, neither the Commission or the Agency have committed to making an award or retaining a Respondent nor does the suggested scope of service or terms of agreement below require that the Commission make an award or retain a Contractor for any or all of the purposes set out in this RFP. The Commission reserves the right to make decisions after receipt of proposals and the Commission's decision on these matters is final.

5.7 SELECTION OF CONTRACTOR(S).

The Contractor selected for award will be the Respondent whose proposal, as determined by the Commission, represents the best value to the state. The Commission reserves the right to reject any or all proposals or any portion of any proposal which, in the Commission's sole and absolute discretion, is not in the best interest of the Commission or the Agency. The Commission reserves the right to negotiate individual elements of any proposal. The Commission reserves the right to meet with and negotiate terms with one or more Respondents. All Respondents acknowledge that the Commission is not bound to accept the lowest-priced proposal.

SECTION VI - CONTRACTUAL REQUIREMENTS

6.1 CONTRACTOR'S PROPOSAL.

The selected proposal will be incorporated into a contract prepared by the Agency for signature by the parties.

6.2 PAYMENT.

All payments are made in accordance with Texas Government Code §2251.381 *et seq.* Unless otherwise agreed to in writing by the Agency, and authorized by state law, payment is only by reimbursement upon satisfactory performance of services.

Contractor shall submit separate, periodic, written, itemized invoices to each Agency for services performed under the Contract based on the amount of time devoted to each Agency's business. Contractor shall submit an invoice to an Agency no later than the 30th day after completing the related services, including delivery of all related reports, required under the Contract. The Contract will provide that each Agency will be billed separately for work performed. The Contractor's final installment will be processed and paid by the Agency once the final audits for the fiscal year are completed and accepted.

Contractor agrees that if the Texas Comptroller of Public Accounts is prohibited from issuing a warrant to Contractor under Texas Government Code §403.055 prohibiting payments to debtors or delinquents, any payments owed to Contractor under any contract resulting from this RFP will be applied towards the debt or delinquency owed to the State of Texas until the debt or delinquency is paid in full.

6.3 REMEDIES.

To ensure full performance of the Contract and compliance with applicable law or to redress wrongs, the Agency may take actions including but not limited to:

- Suspending all or part of the Contract;
- Requiring the Contractor to take specific corrective actions to remain in compliance with the terms of the Contract;
- Requiring a corrective action plan;
- Recouping payments made to the Contractor found in error;
- Suspending, limiting or placing conditions on the continued performance of the Contractor;
- Terminating the contract;
- Withholding payment;
- Pursuing actual damages;
- Pursuing liquidated damages;
- Seeking an injunction or other legal action.

SECTION VII - SUBMISSION CHECKLIST

This checklist is provided for Respondent's convenience only and identifies documents that must be submitted with a proposal to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and may not be considered for contract award.

1. The original proposal and three (3) copies
2. Signed Original Attachment A, Execution of Proposal
3. Respondent Information (see Paragraph 4.2)
4. Respondent's Qualifications/Competencies (see Paragraph 4.2)
5. Respondent's List of Key Personnel, including any subcontractors that would be used (see Paragraph 2.4 and 4.2)
6. Compensation and Fees (see Paragraphs 1.4 and 4.2)
7. Conflict of Interest Disclosures (see Paragraph 3.9 and 4.2)
8. Proposed Services (see Paragraph 4.2)
9. Respondent's Availability and Adequacy of Staff Resources (see Paragraphs 1.6 and 4.2)
10. Information Security Plan (see Paragraphs 1.6 and 4.2)
11. Respondent's two most current year-end financial statements (see Paragraph 2.3)
12. Information regarding professional and development requirements (see Paragraph 2.2)
13. Proof of professional liability and workers' compensation insurance coverage (see Paragraph 2.3)
14. HUB responses (see Paragraph 2.5)
15. Signed copies of any Addenda to the Solicitation (see Paragraph 4.1)
16. Identification of any exceptions (see Section III Introduction)

**ATTACHMENT A - REQUEST FOR PROPOSAL TO PERFORM
INTERNAL AUDITING SERVICES**

**EXECUTION OF PROPOSAL
RFP Number 469-22-001**

NOTE: THIS ATTACHMENT MUST BE SIGNED AND RETURNED WITH THE PROPOSAL. PROPOSALS THAT DO NOT INCLUDE THIS ATTACHMENT WILL BE DISQUALIFIED. THE PROPOSAL SHALL BE VOID, IF FALSE STATEMENTS ARE CONTAINED IN THIS ATTACHMENT.

By signature hereon, Respondent certifies that:

All statements and information prepared and submitted in the Proposal responding to this RFP are current, complete, and accurate.

Respondent has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service, to a public servant in connection with the submitted Proposal.

Neither Respondent nor the firm, corporation, partnership, or institution, represented by Respondent or anyone acting for such firm, corporation, or institution, has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code Chapter 15, or the federal antitrust laws, 15 U.S.C. § 1 *et. seq.*; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in such line of business.

When a Texas business address is shown hereon, that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under Texas Government Code § 2252.001.

Under Texas Government Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. Neither Respondent nor any person or entity that will participate financially in this Contract has received compensation from the Commission, Agency or any agency of the State of Texas for participation in preparation of specifications for this RFP. Furthermore, under § 2155.004, Respondent certifies that the business entity named in this Proposal is not ineligible to receive the specified Contract under this RFP and acknowledges that this Contract may be terminated, and payment withheld, if this certification is inaccurate.

Respondent certifies either that:

1. Respondent has not, and Respondent's employees have not, been convicted of a felony criminal offense; or
2. If such a conviction has occurred, Respondent has fully disclosed the facts and circumstances surrounding the conviction in its Proposal.

Under Texas Family Code § 231.006, relating to child support obligations, Respondent and business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated, and payment withheld, if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the name and tax identification number of each person or entity holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal.

Respondent agrees that any payments due under any Contract awarded pursuant to this RFP will be applied towards any debt, including, but not limited to, delinquent taxes and child support that is owed to the State of Texas. Respondent is not delinquent in the payment of any franchise taxes owed to the State of Texas. Under Texas Government Code § 669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the Commission or Agency, or any other state agency, was involved with or has any interest in this Proposal or any

Contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of the Agency or other state agency, then Respondent shall provide the following information for the Proposal to be evaluated: name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

Respondent certifies that Respondent's partners and key employees for this engagement have not been employees of the Commission or Agency within the last twelve (12) months.

The Commission and Agency are federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), (<https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that: (1) the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity; (2) Respondent is in compliance with the State of Texas statutes and rules relating to procurement; and (3) Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

Under Texas Government Code § 2155.006(b), a state agency may not accept a proposal or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the proposal or award, has been: (1) convicted of violating a federal law, or (2) assessed a penalty in a federal civil or administrative enforcement action, in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code § 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Government Code § 2155.006, the Respondent certifies that the business entity named in this Proposal is not ineligible to receive the specified Contract and acknowledges that any Contract resulting from this RFP may be terminated and payment withheld, if this certification is inaccurate.

Respondent represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this Proposal.

RESPONDENT (COMPANY): _____

SIGNATURE (INK): _____

NAME (TYPED/PRINTED) _____

TITLE: _____ **DATE:** _____

STREET _____

CITY/STATE/ZIP _____

TELEPHONE NUMBER _____

EMAIL ADDRESS _____

TEXAS IDENTIFICATION NUMBER (TIN): _____

ATTACHMENT B – CREDIT UNION DEPARTMENT CONTRACT TERMS AND CONDITIONS

1. NO ORAL AGREEMENT — The Credit Union Department (Agency) will not be bound by any oral statement or representation contrary to the written terms and conditions of this contract.

~~2. NO IMPLIED WAIVER — Nothing in the contract shall be construed as a waiver of the Agency's or the State's sovereign immunity. No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to Agency by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

3. DELAY; DEFAULT — If delay is foreseen, Contractor shall give written notice to Agency. Agency has the right to extend delivery date if reasons appear valid. Contractor must keep Agency advised at all times of status of contract performance. Default in promised delivery (without accepted reasons) of services or goods or failure to meet specifications promised for such services or goods, authorizes Agency to purchase such goods or services elsewhere and charge any increased costs for the goods or services to defaulting Contractor.

4. NO SUBSTITUTIONS OR CANCELLATIONS — No substitutions in goods or services promised or cancellations will be permitted without written approval of Agency.

***5. GOVERNING LAW AND VENUE — This contract shall be governed, construed, and interpreted in accordance with the laws of the State of Texas without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

~~6. CHANGE IN LAW AND COMPLIANCE WITH LAWS — Contractor shall comply with all laws, regulations, requirements, and guidelines applicable to a vendor providing services and products required by the contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the contract. Agency reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the contract to incorporate any modifications necessary for Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

~~7. BINDING — The contract shall be binding upon and shall inure to the benefit of Agency and Contractor and to their representatives, successors and assigns.

~~8. NO THIRD-PARTY BENEFICIARY — The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

9. PAYMENT — Contractor shall submit two copies of an itemized invoice showing the Agency purchase order number issued for the goods or services procured under this contract and the payee identification number (the Texas Identification Number System (TINS) number or Federal Employer's Identification Number). Agency will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Texas Government Code. Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.

10. TAXES -- Purchases made for state use are exempt from the Texas state sales tax and federal excise tax. An Excise Tax Exemption Certificate will be furnished upon written request to Agency.

11. PATENTS, TRADEMARKS, OR COPYRIGHTS — Contractor agrees to defend and indemnify Agency from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other

proprietary rights, arising out of Agency's use of any good or service provided by the Contractor under this contract.

12. **CONTRACTOR ASSIGNMENTS** — Contractor hereby assigns to Agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States, 15 U.S.C.A. §1 et seq. and the antitrust laws of the State of Texas, Texas Business & Commerce Code §15.01 et seq.

13. **CONTRACTOR AFFIRMATION** — Signing this contract with a false statement is a material breach of contract and may void the contract. By signature hereon affixed, the Contractor hereby certifies that:

*** 13.1 The Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.

*** 13.2 Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract to any competitor or any other person engaged in the same line of business as the Contractor.

*** 13.3 Pursuant to §231.006, Texas Family Code (relating to child support obligations), the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any contractor subject to §231.006, Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid or prior to award of this contract.

*** 13.4 Agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the Agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Pursuant to §2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract. Contractor acknowledges that the contract may be terminated, and payment withheld if this certification is inaccurate.

*** 13.5 As required by §2252.903, Gov't Code, Contractor agrees that any payments due under this contract shall be applied directly towards eliminating any debt or delinquency it has to the State of Texas, including, but not limited to, delinquent taxes, student loan payments, and child support, until the debt is paid in full. Contractor shall comply with rules adopted by the Texas Comptroller of Public Accounts under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

*** 13.6 Pursuant to §669.003, Gov't Code, Agency may not enter into a contract with a person who employs a current or former executive head of Agency until four years has passed since that person was the executive head of Agency. Contractor certifies that it does not employ any person who was the executive head of the Agency in the past four years. If Contractor does employ a person who was the executive head of Agency, Contractor will provide the following information:

Name of former executive: _____
Name of state agency: _____
Date of separation from state agency: _____
Position with contractor: _____
Date of employment with contractor: _____

~~ 13.7 In accordance with §572.069, Gov't Code, Contractor agrees that a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from Contractor before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

*** 13.8 In accordance with §2155.4441, Gov't Code, Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

*** 13.9 Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

*** 13.10 Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Contractor certifies that the individual or business entity named in this contract is not ineligible to receive a contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

13.11 Contractor represents and warrants that payment to Contractor and Contractor's receipt of appropriated or other funds under this contract are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition against use of state funds for lobbying activities.

13.12 Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested services or goods to Agency under this contract, and that Contractor's provision of the requested services or goods under the contract would not reasonably create an appearance of impropriety.

*** 13.13 Contractor represents and warrants that the individual signing this contract is authorized to sign this contract on behalf of the Contractor and to bind the Contractor under the contract.

~~ 13.14 Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.

13.15 Under Title 2, Chapter 16, Texas Finance Code, Agency is a self-directed and semi-independent financial regulatory agency. Contractor acknowledges and agrees that under Chapter 16: (a) Payments under this contract are subject to the availability of state funds approved for expenditure by the Commission; (b) The State of Texas will not be liable for any expense or debt under this contract, and money from the general revenue fund may not be used to repay the expense or debt under this contract; and (c) The contract creates no personal liability on the part of members or employees of the Commission or employees of the Agency.

*** 13.16 In accordance with 13 TAC § 6.94(a)(9), upon request of Agency, Contractor shall provide to Agency the descriptions of its business continuity and disaster recovery plans.

*** 13.17 Contractor represents and warrants that it utilizes, and will continue to utilize, for the term of this contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of all persons employed to perform duties within Texas, during the term of the contract, and all persons (including subcontractors) assigned by Contractor to perform work pursuant to the contract, within the United States of America. If it is determined that Contractor has violated the certifications set forth in this Section, then (1) Contractor shall be in breach of contract, (2) Agency shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to Agency under the contract, Contractor shall be responsible for all costs incurred by Agency to obtain substitute services to replace the terminated contract.

*** 13.18 Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

*** 13.19 Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

*** 13.20 Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott

Israel during the term of the contract resulting from this solicitation. Contractor shall notify Agency of any facts that make it exempt from the boycott certification.

~~ 13.21 Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.

~~ 13.22 Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.

~~ 13.23 Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

~~ 13.24 Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit, and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

~~ 13.25 Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense, or that if such a conviction has occurred Contractor has fully advised Agency in writing of the facts and circumstances surrounding the convictions.

~~ 13.26 Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the contract, related to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the contract, related to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Contractor represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

~~ 14. DISCOUNTS — Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Contractor to Agency herein are at least as favorable as the benefits, pricing and hourly rates granted by Contractor to any previous client of Contractor for services and/or products similar to those provided hereunder. If Contractor enters into any subsequent agreement with any other client during the term of this contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this contract, Contractor shall notify Agency promptly of the existence of such more favorable benefits, pricing and/or hourly rates and Agency shall have the right to receive the more favorable contractual terms immediately. If requested in writing by Agency, Contractor hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.

~~ 15 SUBCONTRACTORS — Contractor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the contract. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

*** 16. DISPUTE RESOLUTION — The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by Agency and the Contractor to attempt to resolve any dispute arising under this contract.

***** 17. TERMINATION WITHOUT PENALTY** — This contract and any associated purchase orders are subject to termination or cancellation, without penalty to Agency, either in whole or in part, subject to availability of state funds. Agency is a state agency whose authority, revenues and appropriations are subject to actions of the Texas Legislature and of the Commission, pursuant to Texas Finance Code, Title 2, Chapter 16. If Agency becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds collected by Agency pursuant to Finance Code, Title 2, Chapter 16, or otherwise becomes subject to a condition which would render Agency's or Contractor's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. Payments under this Contract will be subject to termination or cancellation without penalty to Agency, either in whole or in part, subject to the availability of appropriated funds, if Chapter 16 is repealed, or if Agency is no longer self-directed and semi-independent under that chapter, or if Agency otherwise is returned by state law to being funded through the legislative appropriations process. In the event of a termination or cancellation under this section, Agency will not be liable to Contractor for any payments, damages or any other amounts which are otherwise due or which are caused or associated with such termination or cancellation, and Agency will not be required to give prior notice. Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall be liable for payments limited only to the portion of work Agency authorized in writing and which Contractor has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination.

***** 18. PUBLIC INFORMATION ACT** — Contractor understands that Agency will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this contract may be subject to public disclosure pursuant to the Texas Public Information Act, unless it is made confidential by any applicable provision of the Texas Finance Code or other applicable law. Contractor is required to make any information created or exchanged with Agency or the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to Agency or the state. Within three (3) days of receipt, Contractor will refer to Agency any third-party requests, received directly by Contractor, for information to which Contractor has access as a result of or in the course of performance under this contract.

~~19. RECORD RETENTION — Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

***** 20. CONFLICT OF INTEREST** — An Agency employee who performs a purchasing function may not have an interest in, or in any manner be connected with, a contract for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Pursuant to § 2261.252, the Agency may not enter into a contract with any Contractor with whom the following have a financial interest: a member of the Commission; the Credit Union Commissioner, general counsel, chief procurement officer, or procurement director of the Agency; or a family member related to any of the above individuals related within the second degree by affinity or consanguinity. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission.

21. FORCE MAJEURE — Neither Contractor nor Agency shall be liable to the other for any delay in, or failure of, performance of any requirement included in this contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party

could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

~~22. **USE OF STATE PROPERTY** — Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access Agency's network or email while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the contract scope. Contractor shall fully reimburse such charges to Agency within ten (10) calendar days of Contractor's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

~~23. **LIMITATION ON AUTHORITY** — Contractor shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.

24. **INDEPENDENT CONTRACTOR** — Contractor is and shall remain an independent contractor in relationship to Agency. Agency shall not be responsible for withholding taxes from payments made under any contract. Contractor shall have no claim against Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

*** 25. **INDEMNIFICATION — CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, AGENCY, AND ALL OF THEIR OFFICERS, EMPLOYEES, AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF AGENCY, ITS EMPLOYEES OR ITS CONTRACTORS.**

For the avoidance of doubt, Agency shall not indemnify Contractor or any other entity under the contract.

~~26. **WAIVER OF CONSEQUENTIAL DAMAGES — NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.**

~~27. **SURVIVAL**— Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

*** 28. **RIGHT TO AUDIT**— Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards. The contract may be amended unilaterally by Agency to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

~~29. **PUBLICATION** — Contractor shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from the Agency.

~~30. **SEVERABILITY** — If any provision of the contract is construed to be illegal, invalid or unenforceable, such construction will not affect the legality, validity or enforceability of any of its other provisions. It is the intent and agreement of the parties to this contract that that this contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this contract will continue in full force and effect.

*** Indicates provisions that are required to be explicitly included in all contracts.

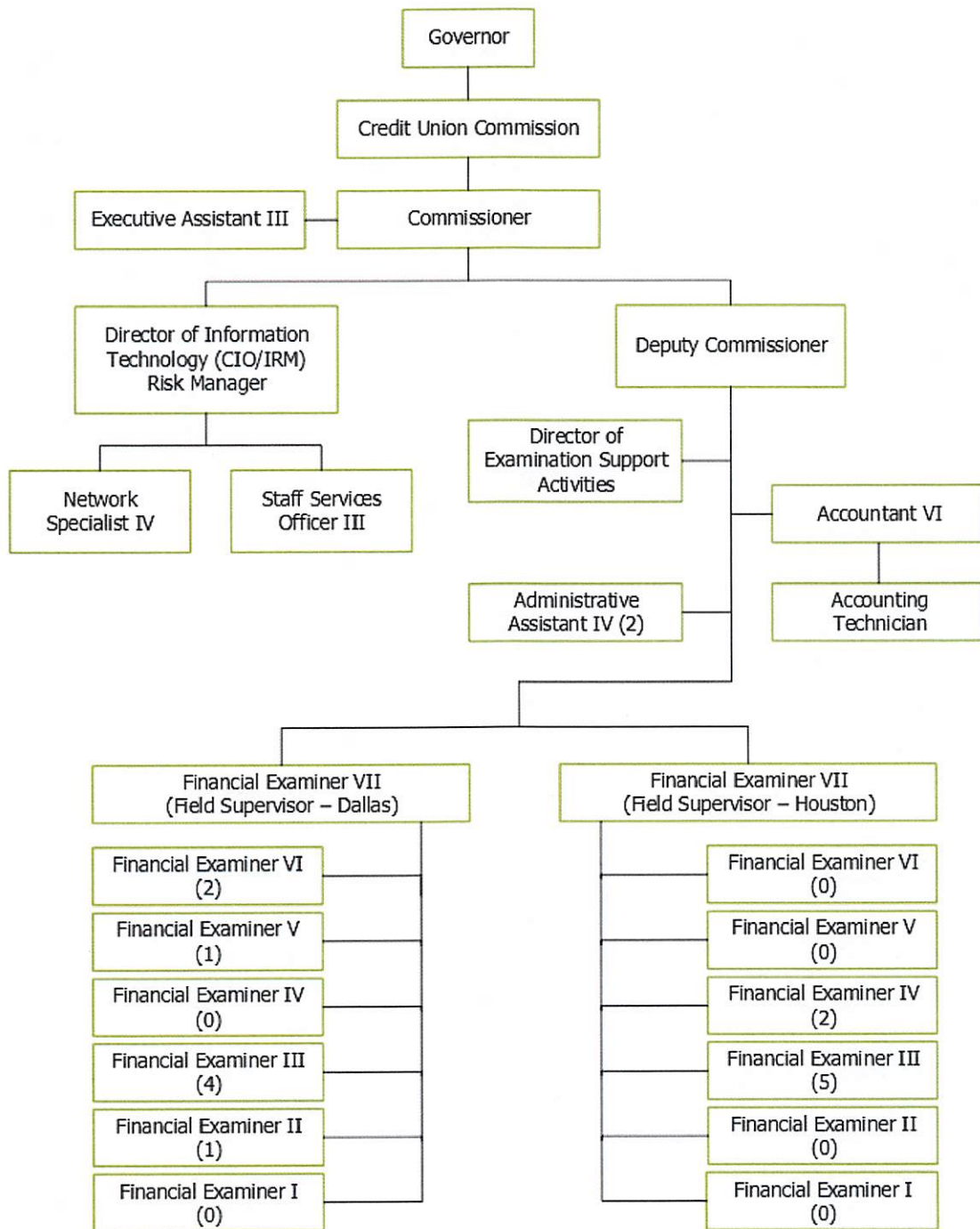
~~ Indicates statutory or rule mandates, but that do not need to be expressed in the contract terms.

All other items are recommended, but not required under statutes or rules.

ADAPTED FROM STANDARD TERMS AND CONDITIONS FOR TEXAS STATE AGENCIES OF TEXAS
COMPTROLLER'S CONTRACT MANAGEMENT GUIDE.

ATTACHMENT C - ORGANIZATIONAL CHART

CREDIT UNION DEPARTMENT STATE OF TEXAS



As of 4/1/2020

F

RULES COMMITTEE

The Rules Committee is a standing committee of the Commission. It has been charged with the managing the review and development of Commission rules and, as appropriate, propose any legislative changes that may be necessary to preserve the attractiveness of a Texas charter.

COMMITTEE MEMBERS

- ❖ David F. Shurtz, Chair
- ❖ Elizabeth L. “Liz” Bayless, Vice Chair
- ❖ Beckie Stockstill-Cobb,
- ❖ Steven “Steve” Gilman
- ❖ Yusuf Farran, Ex-Officio

The Rules Committee met on August 26, 2021, in a virtual public meeting to discuss several items. The Committee will report on its activities for consideration and possible vote by the Commission.

RULEMAKING MATTERS

Six items are being presented to the Commission for its information, consideration, and/or possible action. Specifically, the Commission will discuss, consider and possibly take action on:

- (a) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions), Sections 91.401, 91.402, 91.403, 91.404, 91.405, 91.406, 91.407, and 91.408 and Re-adoption of Rules;
- (b) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter M (Electronic Operations), Sections 91.4001, and 91.4002, and Re-adoption of Rules;
- (c) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter N (Emergency or Permanent Closing of Office or Operation), Sections 91.5001, 91.5002, and 91.5005, and Re-adoption of Rules;
- (d) Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A (Complaint Notices and Procedures), Section 91.121;
- (e) Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter C (Field of Membership), Section 91.301;
- (f) Proposed Amendments in 7 TAC, Part 8, Chapter 153 (Home Equity Lending), Sections 153.13, 153.17, 153.26, 153.45, and 153.51.

RECOMMENDED ACTION: The Department requests that the Commission take action as indicated in the documents contained in **TAB F**.

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.
2. The proposed rule is presented to the commission for consideration.
3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.
4. The proposed rule is adjusted by staff (if required), furnished to legal counsel, and transmitted to the **Texas Register** for publication as a "proposed" rule.
5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.
6. The commission may reconsider the rule any time after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.
7. The rule is adopted as "final" and transmitted to the ***Texas Register*** for publication as a final rule. The rule becomes effective 20 days following filing for publication.
8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

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

PROCEDURES FOR REQUIRED RULE REVIEW

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

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

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

MANDATORY RULE REVIEW

F. (a) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions), Subchapter M (Electronic Operations) and Subchapter N (Emergency or Permanent Closing of Office or Operations) and Re-adoption of Rules.

BACKGROUND: Section 2001.039, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions), Subchapter M (Electronic Operations) and Subchapter N (Emergency or Permanent Closing of Office or Operations) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the July 9, 2021 issue of the *Texas Register*. The Department received one comment on the notice of intention to review. The comment, specific to Section 91.403 (Debt Cancellation Products; Federal Parity; Adoption by Reference) agreed the reasons for adopting the rule continue to exist and no revisions are necessary. The Department believes that the reasons for adopting the noted rules continue to exist.

RECOMMENDED ACTION: The Rules Committee requests the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Commission find that the reasons for adopting 7 TAC, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions), Subchapter M (Electronic Operations) and Subchapter N (Emergency or Permanent Closing of Office or Operations) continue to exist and that the Commission readopt these rules.

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 91.	Chartering, Operations, Mergers, Liquidations
Subchapter D.	Powers of Credit Unions

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter D (relating to Powers of Credit Unions), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.401, 91.402, 91.403, 91.404, 91.405, 91.406, 91.407, and 91.408.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter D, was published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4175). The Department received one comment on the notice of intention to review. The comment, specific to Section 91.403 (Debt Cancellation Products; Federal Parity; Adoption by Reference) agreed the reasons for adopting the rule continue to exist and no revisions are necessary.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter D, §§91.401, 91.402, 91.403, 91.404, 91.405, 91.406, 91.407, and 91.408 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter D. Powers of Credit Unions

§91.401. Credit Union Ownership of Property.

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

(1) **Equipment** includes all movable furniture, fixtures, and equipment of the credit union, its branch offices, and consolidated credit union service organizations, including automobiles and other vehicles, and any lien on the above.

(2) **Immediate family member**--a spouse or other family member living in the same household.

(3) **Premises** include the cost less accumulated depreciation, of land and buildings actually owned and occupied (or to be occupied) by the credit union, its branch offices, and consolidated credit union service organizations. This includes vaults, fixed machinery, parking facilities, and real estate acquired and intended, in good faith, for future expansion. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.

(4) **Senior Management Employee**--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) **Investment Limitations on Premises.** Without the prior written consent of the Department, a credit union may not directly or indirectly invest an amount in excess of its net worth in premises.

(c) **Restrictions on Ownership of Property.** A credit union shall not acquire premises for the principal purpose of engaging in real estate rentals or speculation.

(d) **Transactions with insiders.** Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(1) sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family members of such individual; or

(2) purchase or lease an asset in which a director, committee member, senior management employee, or immediate family members of such individual has an interest.

(e) **Use requirement for premises.** If real property or leasehold interest is acquired [and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.

(f) **Consent to Exceed Limitation.** Generally, a credit union need not obtain the Department's approval to invest in premises. However, prior approval is required if the total aggregate investment in premises will exceed the credit union's net worth. A credit union shall submit such statements and reports as the Department may require in support of the higher investment limit.

(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:

(A) Consistency with safe and sound credit union practices;

(B) The reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and

(C) The effect of the investment on future earnings.

(2) The Department will consider denying a request for an additional investment in credit union premises when:

(A) The additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or

(B) The credit union has not demonstrated a reasonable need for the additional investment.

(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.

§91.402. Insurance for Members.

(a) Authority. A credit union may make insurance products available to its members, including insurance products at the individual member's expense, subject to the following conditions:

(1) Except as provided in paragraphs (2) and (3) of this subsection, the purchase of any type of insurance coverage by a member must be voluntary, and a copy of the signed and dated written election to purchase the insurance must be on file at the credit union.

(2) Insurance may be required on a loan if the coverage and the charges for the insurance bear a reasonable relationship to:

(A) the value of the collateral;

(B) the existing hazards or risk of loss, damage, or destruction; and

(C) the amount, term, and conditions of the loan.

(3) if the insurance is a condition of a loan, the credit union shall give the member written notice that clearly and conspicuously states;

(A) that insurance is required in connection with the loan; and

(B) that the member may purchase or provide the insurance from a carrier of the member's choice, or the member [who is borrowing] may assign any existing insurance coverage.

(4) An officer, director, employee, or committee member of a credit union may not accept anything of value from an insurance agent, insurance company, or other insurance provider offered to induce the credit union to sell or offer to sell insurance or other related products or services to the members of the credit union.

(5) If a credit union replaces an existing loan or renews a loan and sells the member new credit life or disability insurance, the credit union shall cancel the prior insurance and provide the member with a refund or credit of the unearned premium or identifiable charge before selling the new insurance to the member.

(6) The person selling or offering for sale any insurance product in any part of a credit union's office or on its behalf must be at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

(b) Unsafe and Unsound Practice. It is an unsafe and unsound practice for any director, officer, or employee of a credit union, who is involved in the sale of insurance products to members, to take advantage of that business opportunity for personal profit. Recommendations to members to buy insurance should be based on the benefits of the policy, not the compensation received from the sale.

(c) Prohibited Practices. A director, officer, or employee of a credit union may not engage in any practice that would lead a member to believe that a loan or extension of credit is conditional upon either:

(1) The purchase of an insurance product from the credit union or any of its affiliates;

or

(2) An agreement by the member not to obtain, or a prohibition on the member from obtaining, an insurance product from an unaffiliated entity.

§91.403. Debt Cancellation Products; Federal Parity; Adoption by Reference.

(a) Authority. Provided it complies with this section, the Truth in Lending Act (15 U.S.C. 1601), and the applicable provisions of Regulation Z (12 C.F.R. Part 226), a credit union may offer any debt cancellation product, including a debt cancellation contract (DCC) and a debt suspension agreement (DSA), a federal credit union is permitted to offer. For the purposes of this section, a debt cancellation product is a two-party agreement between the credit union and the member under which the credit union agrees to waive, suspend, defer, or cancel all or part of a member's obligation to pay an indebtedness under a lease, loan, or other extension of credit upon the occurrence of a specified event. Debt cancellation products are considered loan products governed by this section and applicable provisions of the Finance Code, not insurance products and, consequently, are not regulated by the Texas Department of Insurance. The credit union may offer debt cancellation products for a fee pursuant to the authority set forth in Finance Code §123.003, relating to enlargement of powers and parity and the authority federal credit unions have to offer such products; the fee also is authorized by Finance Code §124.101, relating to borrower payment of loan expenses. If the debt cancellation product is offered for a fee, the member's participation in the debt cancellation program must be optional, and the member must be informed of the fee and that participation is optional.

(b) Anti-tying and Refund Rules. For any debt cancellation product offered by a credit union:

(1) The credit union may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the member entering into a debt cancellation product with the credit union; and

(2) If the debt cancellation product provides for a refund of unearned fees, the unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method. Before the member purchases the debt cancellation product, the credit union must state in writing that the purchase of the debt cancellation product is optional, the conditions for and method of calculating any refund of the debt cancellation fee, including when fees are considered earned by the credit union, and that the member should carefully review all of the terms and conditions of the debt cancellation agreement prior to signing the agreement.

(c) Notice to Department. A credit union must notify the commissioner in writing of its intent to offer any type of debt cancellation product at least 30 days prior to the product being offered to members. The notice must contain a statement describing the type(s) of debt cancellation product(s) that the credit union will offer to its membership.

(d) Risk Management and Controls. Before offering any debt cancellation products, each credit union's board of directors, shall adopt written policies that establish and maintain effective risk management and control processes for these products. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A credit union should also assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation program. In addition, the policies shall establish reasonable fees, if any, that will be charged, the appropriate disclosures that will be given, and the claims processing procedures that will be utilized.

(e) For purposes of this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is

applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(f) **Best Practices.** The Commission seeks to preserve and promote parity with regard to federal credit unions, foreign credit unions, and other depository institutions, as referenced in Finance Code §§15.402(b-1) and 123.003. The National Credit Union Administration (NCUA) has provided as guidance for federal credit unions the standards set forth in the rules of the U.S. Office of the Comptroller of the Currency (OCC), related to DCCs and DSAs. The Commission, therefore, adopts by reference the guidance issued by NCUA in May 2003 (Letter No. 03-FCU-06). Credit unions should also look to OCC's rules, codified at 12 C.F.R. Part 37, for guidance as to best practices in the industry regarding the offer and sale of DCCs and DSAs. A copy of the NCUA letter and of the OCC rules may be obtained on the Department website at: www.cud.texas.gov.

§91.404. Purchasing Assets and Assuming Deposits and Liabilities of another Financial Institution.

(a) **Scope.** A credit union must obtain the approval of the Department before purchasing all or substantially all of the assets and/or assuming certain deposits and other liabilities of another financial institution. This section does not apply to purchases of assets that occur as a result of a credit union's ordinary and ongoing business of acquiring obligations of its members.

(b) **Approval Requirement.**

(1) A credit union must file an application and obtain the written approval of the Department before entering into any type of purchase and assumption agreement.

(2) In determining whether to approve an application under this section, the Department will consider the purpose of the transaction, its impact on the safety and soundness of the credit union, and any effect on the credit union's existing members. The Department may deny the application if the transaction would have a negative effect on any of those factors.

§91.405. Records Retention and Preservation.

(a) **General.** Every credit union shall keep records of its transactions in sufficient detail to permit examination, audit and verification of financial statements, schedules, and reports it is required to file with the Department or which it issues to its members. Credit union accounts, books and other records shall be maintained in appropriate form and for the minimum periods prescribed by this section. The retention period for each record starts from the last entry or final action date and not from the inception of the record.

(b) **Manner of maintenance.** Records may be maintained in whatever manner, or format a credit union deems appropriate; provided, however, the records must clearly and accurately reflect the information required, provide an adequate basis for the examination and audit of the information, and be retrievable easily and in a readable and useable format. A credit union may contract with third party service providers to maintain records required under this part.

(c) **Permanent retention.** It is recommended that the following records be retained permanently in their original form:

(1) charter, bylaws, articles of incorporation, and amendments thereto; and

(2) currently effective certificates or licenses to operate under programs of various government agencies.

(d) **Ten year retention.** Records which are significant to the continuing operation of the credit union must be retained until the expiration of ten years following the making of the record or the

last entry thereon or the expiration of the applicable statute of limitations, whichever is later. The records are:

- (1) minutes of meetings of the members, the board of directors, and board committees;
- (2) journal and cash record;
- (3) general ledger and subsidiary ledgers;
- (4) for active accounts, one copy of each individual share and loan ledger or its equivalent;
- (5) comprehensive annual audit reports including evidence of account verification; and
- (6) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

(e) Five year retention. The following records must be retained until the expiration of five years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later:

- (1) records related to closed accounts including membership applications, joint membership agreements, payable on death agreements, signature cards, share draft agreements, and any other account agreements; loan agreements; and

- (2) for an active account, any account agreement which is no longer in effect.

(f) Other records. Subject to applicable law, any other type of document not specifically delineated in this rule may be destroyed after five years or upon expiration of an applicable statute of limitations, whichever is longer.

(g) Data processing records. Provisions of this section apply to records produced by a data processing system. Output reports that substitute for standard conventional records or that provide the only support for entries in the journal and cash record should be retained for the minimum period specified in this rule.

(h) Protection and storage of records. A credit union shall provide reasonable protection from damage by fire, flood and other hazards for records required by this section to be preserved and, in selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(i) Records destruction. The board of directors shall adopt a written policy authorizing the destruction of specified records on a continuing basis upon expiration of specified retention periods.

(j) Records preservation. All state chartered credit unions are required to maintain a records preservation program to identify and store vital records in order that they may be reconstructed in the event the credit union's records are destroyed. Storage of vital records is the responsibility of the board but may be delegated to the responsible person(s). A vital records storage center should be established at some location that is far enough from the credit union office to avoid the simultaneous loss of both sets of records in the event of a disaster. Records must be stored every calendar quarter within 30 days following quarter-end at which time records stored for the previous quarter may be destroyed. Stored records may be in any form which can be used to reconstruct the credit union's records. This includes machine copies, microfilm, or any other usable copy. The records to be stored shall be for the most recent month-end and are:

- (1) a list of all shares and/or deposits and loan balances for each member's account. Each balance on the list is to be identified by an account name or number. Multiple balances of either shares or loans to one account shall be listed separately;

- (2) a financial statement/statement of financial condition which lists all the credit union's assets and liability accounts;

- (3) a listing of the credit union's banks, insurance policies and investments. This information may be marked "permanent" and updated only when changes are made.

(k) Records preservation compliance. Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance so long as the processor

meets the minimum requirements of this section. Credit unions that have in-house capabilities shall make the necessary provisions to safeguard the backup of data on a continuing basis.

(l) Reproduction of records. A credit union shall furnish promptly, at its own expense, legible, true and complete copies of any record required to be kept by this section as requested by the department.

§91.406. Credit Union Service Contracts.

A credit union may enter into contractual agreements with one or more credit unions or other organizations for the purpose of engaging in authorized activities that relate to electronic data processing, electronic fund transfers, or other member services on behalf of the credit union. Agreements must be in writing and shall advise all parties that the activities and services may be subject to commission rules and examination by the commissioner to the extent permitted by law.

§91.407. Electronic Notification.

A credit union may, in accordance with written board policy, satisfy any “written” member notification requirement of the Act, commission rules, or the credit union’s bylaws by electronic means provided:

- (1) the member agrees in writing or electronically to use electronic instead of hard-copy notifications;
- (2) the member has the ability to print or download the notification;
- (3) evidence of the electronic notification is retained in accordance with §91.405 (relating to Records Retention); and
- (4) both the credit union and the member have the capacity to receive electronic messages.

§91.408. User Fee for Shared Electronic Terminal.

A credit union that owns an electronic terminal that is connected to a shared network may impose a fee on a non-member for the use of that terminal if imposition of the fee is disclosed in compliance with applicable federal law.

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 91.	Chartering, Operations, Mergers, Liquidations
Subchapter M.	Electronic Operations

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter M (relating to Electronic Operations), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.4001, and 91.4002.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter M, was published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4175). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter M, §§91.4001, and 91.4002 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter M. Electronic Operations

§91.4001. Authority to Conduct Electronic Operations.

- (a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, mobile applications, personal computers, the Internet, telephones, and other similar electronic devices.
- (b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.
- (c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:
 - (1) Identify, assess, and mitigate potential risks and establish prudent internal controls, and system backup procedures;
 - (2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:
 - (A) the prevention of unauthorized access to credit union records and credit union members' records;
 - (B) the prevention of financial fraud through the use of electronic means or facilities; and
 - (C) compliance with applicable security device requirements for teller machines contained elsewhere in Chapter 91; and
 - (3) Employ an incident response plan, which has been subjected to reasonable testing, to minimize the impact of a data breach or other electronic incident while quickly restoring operations, credibility, and security.
- (d) All credit unions engaging in such electronic activities must comply with all applicable state and federal laws and regulations as well as address all safety and soundness concerns.
- (e) A credit union shall review, on at least an annual basis, its system backup procedures for all electronic activities.
- (f) A credit union shall not be considered doing business in this State solely because it physically maintains technology, such as a server, in this State, or because the credit union's product or services are accessed through electronic means by members located in this State.
- (g) A credit union that shares electronic space, including a co-branded web site, with a credit union affiliate, or another third-party must take reasonable steps to clearly and conspicuously distinguish between products and services offered by the credit union and those offered by the credit union's affiliate, or the third-party.

§91.4002. Transactional Web Site Notice Requirement; and Security Review.

- (a) A credit union must file a written notice with the commissioner at least 30 days before it establishes a transactional web site. The notice must:
 - (1) Include an address for and a description of the transactional features of the web site;
 - (2) Indicate the date the transactional web site will become operational; and

(3) List a contact person familiar with the deployment, operation, and security of the transactional web site.

(b) For the purposes of this chapter a transactional web site is an Internet site that enables users to access an account and conduct financial transactions such as transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) Credit unions that have a transactional web site must provide for a review of the adequacy of the web site's security measures annually. The scope of the review should cover the adequacy of physical and logical protection against denial of service attacks and other attack vectors designed to gain unauthorized access to the system. If the credit union outsources this technology platform, it can rely on testing or audits performed for the service provider to the extent it satisfies the scope requirements of this subsection.

Nathan L. Moenck
Associate General Counsel
Office of General Counsel
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E-mail: nathan.moenck@cunamutual.com
Fax: (608)236.6818



August 6, 2021

SUBMITTED VIA EMAIL ONLY: CUDMAIL@CUD.TEXAS.GOV

John J. Kolhoff, Commissioner
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

RE: TDR-202102464

Dear Commissioner Kolhoff:

I write on behalf of CUNA Mutual Group to comment on the Commission's rule review of 7 TAC, Chapter 91, Subchapter D, §91.403 (Debt Cancellation Products; Federal Parity). CUNA Mutual Group agrees with the Commission that the reasons for adopting this rule continue to exist and that no revisions are necessary at this time.

CUNA Mutual Group is the nation's leading provider of financial products and services to credit unions and credit union members. CUNA Mutual Group was created by the credit union movement in 1935 to offer credit life insurance policies to fulfill the concept that the "debt shall die with the debtor." Our Company's values are deeply intertwined with credit unions, and we share credit unions' mission to serve member-owners. Credit union leaders serve on our board, and we are proud of our heritage in the credit union movement. Since our founding, CUNA Mutual Group has helped people plan, protect, and invest for their future—regardless of financial standing.

CUNA Mutual Group makes available to credit unions various products that are offered to members throughout the relationship with the credit union, including debt cancellation products. These products include Debt Protection and Guaranteed Asset Protection (GAP). CUNA Mutual Group is the largest provider of credit insurance and debt cancellation products to credit unions and their members. Nationwide, these products protect roughly five million credit union loans totaling about \$45.5 billion. Specifically, in Texas, CUNA Mutual Group makes available Debt Protection and/or GAP to roughly 136 credit unions, which protect about 85,000 credit union consumer loans totaling approximately \$810 million. Collectively, these voluntary products help credit unions protect their members from life's unexpected events.

CUNA Mutual Group writes to support the Debt Cancellation rule as drafted. The rule ensures consumer protections, while allowing Texas credit unions to continue to offer such products in a safe and sound manner by granting automatic parity with federal law. The rule will continue to enable an effective regulatory structure that allows credit unions to provide exceptional value to members during difficult financial times when it is needed most.

08/06/21

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CUNA Mutual Group appreciates the opportunity to comment on the Debt Cancellation rule. Please feel free to reach out to me directly if you have any questions or we can assist the Commission in any way.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Moenck", with a stylized flourish at the end.

Nathan L. Moenck
Associate General Counsel

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 91.	Chartering, Operations, Mergers, Liquidations
Subchapter N.	Emergency or Permanent Closing of Office or Operation

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter N (relating to Emergency or Permanent Closing of Office or Operation), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.5001, 91.5002, and 91.5005.

The rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code §2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter N, was published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4175). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter N, §§91.5001, 91.5002, and 91.5005 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter N. Emergency or Permanent Closing of Office or Operation

§91.5001. Emergency Closing.

(a) If the officer in charge of a credit union determines that an emergency that affects or may affect one or more of the credit union's offices or operations exists or is impending, the officer may determine:

(1) not to conduct the involved operations or open the offices on any normal business day of the credit union until the emergency has passed; or

(2) if the credit union is open, to close the offices or the involved operations for the duration of the emergency.

(b) Subject to subsection (c) of this section, a closed office or operation may remain closed until the officers determine that the emergency has ended and for any additional time reasonably required to reopen.

(c) A credit union that closes an office or operation under this section shall notify the commissioner of its action by any means available and as promptly as conditions permit. In addition, notice of such closure should be posted on the home page of the credit union's website and on its social media pages. An office or operation may not be closed for more than three consecutive days, excluding days on which the credit union is customarily closed, without the commissioner's written approval.

(d) Each credit union shall maintain on file with the department a report of emergency contact information pertaining to its officers, directors, and committee members in such form as the commissioner may prescribe.

(e) In this chapter, the following words and terms shall have the following meanings:

(1) Emergency – means a condition or occurrence that physically interferes with the conduct of normal business at the offices of a credit union or of a particular credit union operation or that poses an imminent or existing threat to the safety or security of persons, property, or both. The term includes a condition or occurrence arising from:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice or snow storm;

(B) labor dispute or strike;

(C) disruption or failure of utilities, transportation, communication or information systems and any applicable backup systems;

(D) shortage of fuel, housing, food, transportation, or labor;

(E) robbery, burglary, or attempted robbery or burglary;

(F) epidemic or other catastrophe; or

(G) riot, civil commotion, enemy attack, or other actual or threatened act of lawlessness or violence.

(2) Officer in charge – means the president of the credit union, or a person designated by the president, who shall have the authority to take all necessary and appropriate actions to deal appropriately with the emergency. The president of a credit union shall always have an individual designated as an officer in charge during his/her absence or unavailability.

§91.5002. Effect of Closing.

A day on which a credit union or one or more of its operations is closed during its normal business hours as provided by §91.5001 of this title (relating to Emergency Closings) shall be deemed a legal holiday for all purposes with respect to any credit union business affected by the closed credit union or credit union operation.

§91.5005. Permanent Closing of an Office.

A credit union may permanently close any of its established offices or service facilities. The credit union shall provide notice to its members and the department no later than 60 days prior to the proposed closing. The credit union shall also post a notice to members in a conspicuous manner on the premises of the effected office or service facility and the homepage of the credit union's website and any social media pages at least 30 days prior to the proposed closing.

COMPLAINT NOTICES AND PROCEDURES

F. (b) Approve for Publication and Comment Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.121 (Complaint Notices and Procedures).

BACKGROUND: The purpose of the proposed amendments is to implement amendments to Finance Code Section 15.408 that resulted from the passage of SB 707. Finance Code Section 15.408 provides that the Commission shall maintain a system to promptly and efficiently act on complaints filed with the Credit Union Department (Department).

The proposed rule changes are intended to incorporate SB 707's redesign of Finance Code Section 15.408 from provisions previously found in Section 15.409 and further amendments providing for additional data element tracking and annual reporting related to complaints filed with the Department against chartered credit unions.

RECOMMENDED ACTION: The Rules Committee requests that the Commission approve the proposed rule for publication and comment.

RECOMMENDED MOTION: I move that the Commission approve for publication and comment the proposed rule 7 TAC Section 91.121 concerning Complaint Notices and Procedures.

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 91.	Chartering, Operations, Mergers, Liquidations
Subchapter A	General Rules
Rule §91.121	Complaint Notices and Procedures

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, Section 91.121 concerning complaint notices and procedures. The purpose of the proposed amendments is to implement amendments to Finance Code Section 15.408 that resulted from the passage of SB 707. Finance Code Section 15.408 provides that the Commission shall maintain a system to promptly and efficiently act on complaints filed with the Credit Union Department (Department).

The proposed rule changes are intended to incorporate SB 707's redesign of Finance Code Section 15.408 from provisions previously found in Section 15.409 and further amendments providing for additional data element tracking and annual reporting related to complaints filed with the Department against chartered credit unions.

The proposed amendments to paragraph (a) amends the legal citation to reflect the redesign of the Finance Code created by the passage of SB 707.

The proposed amendments to paragraph (c)(2) represents a grammar correction.

The proposed amendments to paragraph (c)(4) address grammar corrections and incorporate language added to the Finance Code by the passage of SB 707.

The proposed amendments to paragraph (c)(5) address grammar changes to clarify the paragraphs meaning.

The proposed amendments to (c)(7) address language changes required by the passage of SB 707 which specifically involves additional data elements to be tracked in the complaint process.

The proposed amendments to paragraph (d) addresses a grammar edit.

The proposed new paragraph (f) incorporates the Departments annual reporting requirement initiated as a result of the passage of SB 707.

STATE AND LOCAL GOVERNMENTS

John J. Kolhoff, Commissioner, has determined that for the first five-year period that the rule changes are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule changes.

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Kolhoff has also determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the proposed amendments because they will have access

to information which will assist them in making complaints and will allow a better understanding of the process by which complaints are reviewed by the Department. There will be no anticipated cost to persons who are required to comply with the proposed amendments.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

Mr. Kolhoff has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not:

Create or eliminate a government program;

Require the creation of new employee positions or the elimination of existing employee positions;

Require an increase or decrease in future legislative appropriations to the agency;

Create new regulations;

Expand, limit, or repeal an existing regulation;

Increase fees paid to the department;

Increase or decrease the number of individuals subject to the rule's applicability; or

Positively or adversely affect this state's economy.

Written comments on the proposed amendments may be submitted to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to [CUDMail@cud.texas.gov](mailto:CUDMail@ cud.texas.gov). To allow the Commission sufficient time to fully address all the comments it receives, all comments must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

The rule changes are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code Title 2, Chapter 15 and Title 3, Subtitle D.

The statutory provision affected by the proposed amendments is Texas Finance Code, Section 15.408, regarding consumer information and complaints.

§91.121. Complaint Notices and Procedures.

(a) Purpose. This section implements Finance Code **§15.408** **[§15.409]**, which requires the Department to maintain a system to promptly and efficiently act on each complaint filed with the Department.

(b) Required Notice.

(1) Credit unions must provide their members with a notice that substantially conforms to the language and form of the following notice in order to let its members know how to file complaints:

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

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address.

The credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. If any dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department through one of the means indicated below: In Person or U.S. Mail: 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Facsimile Number: (512) 832-0278; email: [complaints@cud.texas.gov](mailto:complaints@ cud.texas.gov), Website: www.cud.texas.gov.”

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

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

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

(B) If a credit union maintains a website, the required notice or a link to the required notice must be conspicuously posted on the homepage of the website.

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

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

(c) Filing, Receipt, and Handling of Complaints.

(1) The Department shall make available, on its public website (www.cud.texas.gov) and at its office, information on how to file a complaint.

(2) A person who alleges that a credit union has committed an act^[1] or failed to perform an act that may constitute a violation of the Texas Credit Union Act or Department rules may file a complaint in writing with the Department. The complainant may complete and submit to the Department the complaint form the Department maintains at the Department’s office and on its public website, or the complainant may submit a complaint in a letter that addresses the matters covered by the complaint form. At a minimum, all complaints should contain information necessary for the proper processing of the complaint by the Department, including, but not limited to:

(A) complainant’s name and how the complainant may be contacted;

(B) name and address of the credit union against whom the complaint is made;
(C) a brief statement of the nature of the complaint and relevant facts, including names of persons with knowledge, times, dates, and location; and

(D) Copies of any documents or records related to the complaint (original records should not be sent with a complaint).

(3) Anonymous complaints may be accepted by the Department, but the lack of a witness or the inability of the Department to secure additional information from the anonymous complainant may result in the Department's inability to secure sufficient evidence to pursue action against a credit union.

(4) The Department will review all complaints to determine whether they are within the Department's jurisdiction or authority to resolve[,] and will send an acknowledgement letter to the complainant within five (5) business days of receipt of a complaint. At least quarterly until final disposition of the complaint, the Department shall provide status updates to the complainant and respondent credit union, orally or in writing, **unless the notice would jeopardize an investigation.**

(5) Upon determining that a complaint is within the Department's jurisdiction, the Department will inform the credit union respondent of the complaint and will request a written response from the credit union. Along with a request for response, the Department will transmit to the credit union a copy of the complaint and any attachments. Within fifteen (15) days from the date of the request for response, unless the period is extended by the Department, the credit union shall provide a substantive response and set forth the credit union's position with respect to the allegations in the complaint, which shall include all data, information and documentation supporting its position, or a description of corrective measures taken or intended to be taken. The Department may request[,] and the complainant and respondent shall provide, **[to the Department]** additional information or further explanation at any time during the review of the complaint.

(6) Once the Department has received the documentation from both parties, the Department will review the information and will process the complaint in accordance with the rules of the Department. The Department will advise both parties in writing of the final disposition of the complaint.

(7) The Department shall maintain a file on each complaint filed with the agency. The file shall include:

(A) the name of the complainant **and their relationship to the institution;**
(B) the date the complaint is received **and resolved or closed** by the Department;
(C) the **basis [subject matter]** of the complaint;
(D) a summary of the results of the review of the complaint **including issuance of any enforcement action;** and

(E) an explanation of the reason the file was closed, if the Department closed the file without taking action other than to review the complaint.

(8) The Department will maintain a database of complaints in order to identify trends or issues related to violations of state laws under the Department's jurisdiction.

(d) Complaints Closed with No Action Beyond Review. Certain complaints and disputes may be closed with no action taken other than to review the complaint. Such complaints may include those that are not within the Department authority to investigate or adjudicate, and which may be referred to as non-jurisdictional complaints. The Department, for example, will not address complaints concerning contractual matters or internal credit union practices that are not

governed by the statutes or rules that the Department implements or enforces. The Department also may close without taking action other types of complaints, including undocumented factual disputes between a person and a credit union and complaints involving matters that are the subject of a pending lawsuit. The Department does not offer legal assistance and cannot represent individuals in settling claims or recovering damages. The Department does not own, operate, or control credit unions, and the Department does not establish their operating policies and procedures. Therefore, the Department may close without taking action complaints concerning the range of services a credit union offers, complaints about bad customer service, and disagreements over specific credit union policies, practices, or procedures, or about other matters that are not governed by a law or rule under the Department's jurisdiction. The Department will inform the complainant and respondent credit union when a complaint is closed with no action taken^[6] and will inform them of the reason for closing the case.

(e) Privacy. The information collected from complainants and respondents is solicited to provide the Department with information that is necessary and useful in reviewing complaints received from persons regarding their interactions with a credit union. A complainant is not required to give the Department any information; however, without such information, the Department's ability to complete a review, to investigate, or to prosecute a matter may be hindered. It is intended that the information a person provides to the Department will be used within the Department and for the purpose of investigating and prosecuting a complaint. A person should not include personal or confidential information such as social security, credit card, or account numbers, or dates of birth when corresponding with the Department. If it is necessary to supply a document that contains personal or confidential information, the information should be redacted before the document is submitted to the Department.

(f) The Department will annually produce a statistical analysis of complaints processed and related enforcement actions for the preceding fiscal year which must include at a minimum:

(1) total complaints filed, closed and outstanding;

(2) resolved complaints aggregated by source, basis of complaint, disposition, jurisdictional vs. non-jurisdictional, regulatory vs. non-regulatory penalties or fees assessed and the average number of days to resolve.

S.B. No. 707

AN ACT

relating to the continuation and functions of the Credit Union Department and the Credit Union Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 15, Finance Code, is amended by adding **Section 15.104** to read as follows:

Sec. 15.104. NOTIFICATION AND GUIDANCE ON ADOPTION OF CERTAIN FEDERAL LAWS OR REGULATIONS. The department shall promptly notify and issue guidance to all credit unions chartered in this state on the adoption of a federal law or regulation that:

(1) affects a power or authority conferred to credit unions under Section 123.003(a);

(2) takes effect immediately; and

(3) conflicts with state law.

SECTION 2. **Section 15.2041**, Finance Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The training program must provide the person with information regarding:

(1) the law governing department operations [~~legislation that created the department~~];

(2) the programs, functions, rules, and budget of the department;

(3) the scope of and limitations on the rulemaking authority of the commission;

(4) the results of the most recent formal audit of the department;

(5) [~~(4)~~] the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) [-5+] any applicable ethics policies adopted by the department or the Texas Ethics Commission[; and

[-6] the basic principles and responsibilities of credit union management].

(d) The commissioner shall create a training manual that includes the information required by Subsection (b). The commissioner shall distribute a copy of the training manual annually to each commission member. Each commission member shall sign and submit to the commissioner a statement acknowledging that the commission member received and has reviewed the training manual.

SECTION 3. Section 15.212, Finance Code, is amended to read as follows:

Sec. 15.212. SUNSET PROVISION. The Credit Union Department and the Credit Union Commission are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department and commission are abolished September 1, 2033 [2021].

SECTION 4. Sections 15.409(b), (c), and (d), Finance Code, are redesignated as Section 15.408, Finance Code, and amended to read as follows:

Sec. 15.408. CONSUMER COMPLAINTS. (a) [~~b~~] The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) [~~(e)~~] The department shall make information available describing its procedures for complaint investigation and resolution.

(c) [~~(d)~~] The department shall periodically notify the complaint parties [~~person filing the complaint and each person who is the subject of the complaint~~] of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

SECTION 5. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4081 to read as follows:

Sec. 15.4081. COMPLAINT TRACKING; ANNUAL STATISTICAL ANALYSIS. (a) To help identify and address regulatory issues and constraints, the department shall track all phases of the complaint and enforcement processes, including the receipt, investigation, and disposition of complaints. The department shall maintain the following information for each complaint:

- (1) the basis for the complaint;
- (2) the origin of the complaint, including whether the complaint was issued from:
 - (A) another regulatory agency;
 - (B) a credit union member;
 - (C) a credit union employee;
 - (D) a member of the public; or
 - (E) a public or private entity;
- (3) the number of days taken to resolve the complaint from the date the complaint was received; and
- (4) the disposition of the complaint, including:
 - (A) if no disciplinary action was taken, the reasons no disciplinary action was taken;
 - (B) if disciplinary action was taken, the type of disciplinary action taken, including the amount of any administrative penalty or late fee;

S.B. No. 707

(C) if dismissed or referred to another agency, the details regarding dismissal or referral; and

(D) if ongoing, the current status of the complaint.

(b) The department shall annually compile a statistical analysis of the department's complaint and enforcement processes for the preceding fiscal year. The analysis must include:

(1) the total number of complaints filed with the department against credit unions;

(2) the number of open investigations at the end of the fiscal year;

(3) the number of complaints that were resolved, disaggregated by:

(A) the source of the complaint;

(B) the type of alleged violation;

(C) jurisdictional and non-jurisdictional

complaints;

(D) regulatory and nonregulatory complaints; and

(E) the disposition and type of action taken,

including any administrative penalty or late fee assessed; and

(4) the average number of days taken to resolve a
complaint, including complaints that were resolved through an
examination of a credit union.

SECTION 6. The heading to Section 15.409, Finance Code, is
amended to read as follows:

Sec. 15.409. CONSUMER INFORMATION [~~AND COMPLAINTS~~].

SECTION 7. Section 122.001(d), Finance Code, is repealed.

SECTION 8. The repeal of Section 122.001(d), Finance Code, by
this Act applies only to articles of incorporation filed on or
after the effective date of this Act. Articles of incorporation
filed before the effective date of this Act are governed by the law
in effect on the date the articles were filed, and the former law

is continued in effect for that purpose.

SECTION 9. (a) Except as provided by Subsection (b) of this section, Section 15.2041, Finance Code, as amended by this Act, applies to a member of the Credit Union Commission appointed before, on, or after the effective date of this Act.

(b) A member of the Credit Union Commission who, before the effective date of this Act, completed the training program required by Section 15.2041, Finance Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 15.2041, Finance Code. A commission member described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission held on or after December 1, 2021, until the member completes the additional training.

SECTION 10. This Act takes effect September 1, 2021.

S.B. No. 707

S.B. No. 707

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 707 passed the Senate on April 19, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 707 passed the House on May 19, 2021, by the following vote: Yeas 136, Nays 9, one present not voting.

Chief Clerk of the House

Approved:

S.B. No. 707

Date

Governor

FIELD OF MEMBERSHIP

F. (c) Approve for Publication and Comment Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter C, Section 91.301 (Field of Membership).

BACKGROUND: The amended rule is proposed to ensure consistency with the field of membership language provided by Texas Finance Code Section 122.051, to recognize the growing consumer expectation of, operational efficiencies obtained through, and safety and soundness implications of, digital delivery of financial services, and ensure competitiveness with the National Credit Union Administration (NCUA) field of membership rules.

On March 19, 2020 the State of Texas issued its first Declaration of a Public Health Disaster in response to the Covid-19 Pandemic. Similar declarations occurred throughout the country at the national, state, county and municipal level, and indeed throughout the world. As a result, the delivery of financial services under appropriate safety standards, including significant restrictions on physical interaction, made providing services through digital channels an important component of the credit union industry's ability to continue their statutory mission of providing convenient, safe and competitive financial services to their memberships.

Texas chartered credit unions worked diligently to utilize digital channels in conjunction with their diverse physical presence to ensure Texas consumers had full and unfettered access to their funds and necessary loan products. Further, access through digital channels was a major contributor toward the implementation of national, state and local programs designed to assist various economically impacted groups and provide broad support to mitigate the negative impact of the pandemic to the overall economy. Finally, the ability to react appropriately during a disaster using digital services evidenced itself as an important component of an institution's ability to maintain itself as a safe, sound and viable entity. As a result, the digital delivery of financial services was proven to be not only a matter of consumer convenience, but one of safety and soundness relating to the diversity of programs available to meet the industry's mission as well as public policy relating to the ability to react to significant adverse scenarios and maintain a viable industry.

As the Commission reviewed TAC 91.301 it noted that the rule does not consider digital delivery channels as a component of an institution's ability

to serve its membership despite the safety and soundness, public policy and consumer convenience implications. It was also noted that the limitation in recognizing digital financial services imposed by TAC 91.301 is beyond the field of membership requirements outlined by Texas Finance Code Section 122.051, and in direct contravention to the legislative intent outlined by Texas Finance Code Section 15.402 (b-1).

The purpose of the proposed amendments to Section 91.301 are to remove the local service area definition which exceeds the legislative requirements found in Texas Finance Code Section 122.051 and to allow the commissioner to consider an institution's ability to provide financial services through digital channels to meet the needs of its membership. The proposed amendments will provide credit unions the full extent of the field of membership provisions found in the Texas Finance Code and will help ensure parity with both federal and foreign state credit unions doing business in Texas.

The proposed changes within Section §91.301(a) removes the definition of local service area and related physical office requirement to allow the commissioner to consider the ability of an institution to provide digital delivery channels as a viable option in its ability to serve its membership.

The proposed deletion of Section §91.301(e)(2) removes the related physical office requirements for an approved underserved community field of membership to ensure the same consideration of digital delivery of financial services is available to the commissioner.

RECOMMENDED ACTION: The Rules Committee requests the Commission approve the proposed rule for publication and comment.

RECOMMENDED MOTION: I move that the Commission approve for publication and comment the proposed rule 7 TAC Section 91.301 concerning Field of Membership.

TITLE 7. BANKING AND SECURITIES
Part 6. Credit Union Department
Chapter 91. General Rules
Subchapter C. Members
Rule §91.301 Field of Membership

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, Subchapter C, Section 91.301, concerning field of membership. The amended rule is proposed to ensure consistency with the field of membership language provided by Texas Finance Code Section 122.051, to recognize the growing consumer expectation of, operational efficiencies obtained through and safety and soundness implications of, digital delivery of financial services, and ensure competitiveness with the National Credit Union Administration (NCUA) field of membership rules.

On March 19, 2020 the State of Texas issued its first Declaration of a Public Health Disaster in response to the Covid-19 Pandemic. Similar declarations occurred throughout the country at the national, state, county and municipal level, and indeed throughout the world. As a result, the delivery of financial services under appropriate safety standards, including significant restrictions on physical interaction, made providing services through digital channels an important component of the credit union industry's ability to continue their statutory mission of providing convenient, safe and competitive financial services to their memberships.

Texas chartered credit unions worked diligently to utilize digital channels in conjunction with their diverse physical presence to ensure Texas consumers had full and unfettered access to their funds and necessary loan products. Further, access through digital channels was a major contributor toward the implementation of national, state and local programs designed to assist various economically impacted groups and provide broad support to mitigate the negative impact of the pandemic to the overall economy. Finally, the ability to react appropriately during a disaster using digital services evidenced itself as an important component of an institution's ability to maintain itself as a safe, sound and viable entity. As a result, the digital delivery of financial services was proven to be not only a matter of consumer convenience, but one of safety and soundness relating to the diversity of programs available to meet the industry's mission as well as public policy relating to the ability to react to significant adverse scenarios and maintain a viable industry.

As the Commission reviewed TAC 91.301 it noted that the rule does not consider digital delivery channels as a component of an institution's ability to serve its membership despite the safety and soundness, public policy and consumer convenience implications. It was also noted that the limitation in recognizing digital financial services imposed by TAC 91.301 is beyond the field of membership requirements outlined by Texas Finance Code Section 122.051, and in direct contravention to the legislative intent outlined by Texas Finance Code Section 15.402 (b-1).

The purpose of the proposed amendments to Section 91.301 are to remove the local service area definition which exceeds the legislative requirements found in Texas Finance Code Section 122.051 and to allow the commissioner to consider an institution's ability to provide financial

services through digital channels to meet the needs of its membership. The proposed amendments will provide credit unions the full extent of the field of membership provisions found in the Texas Finance Code and will help ensure parity with both federal and foreign state credit unions doing business in Texas.

The proposed changes within Section §91.301(a) removes the definition of local service area and related physical office requirement to allow the commissioner to consider the ability of an institution to provide digital delivery channels as a viable option in its ability to serve its membership.

The proposed deletion of Section §91.301(e)(2) removes the related physical office requirements for an approved underserved community field of membership to ensure the same consideration of digital delivery of financial services is available to the commissioner.

STATE AND LOCAL GOVERNMENTS

John J. Kolhoff, Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule changes.

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Kolhoff has also determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be greater clarity regarding the rule's requirements and significant regulatory relief for credit unions. There will be no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as compared to large businesses. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

Mr. Kolhoff has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not:

- Create or eliminate a government program;
- Require the creation of new employee positions or the elimination of existing employee positions;
- Require an increase or decrease in future legislative appropriations to the agency;
- Create new regulations;

- Expand or repeal an existing regulation;
- Increase fees paid to the department;
- Increase or decrease the number of individuals subject to the rule's applicability; or
- Positively or adversely affect this state's economy.

Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to [CUDMail@cud.texas.gov](mailto:CUDMail@ cud.texas.gov). To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subtitle D of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Section 122.051.

Subchapter C. Members

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has its own community of interest as **outlined under Texas Finance Code Section 122.051 [and is within the credit union's local service area. In this section, local service area generally consists of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by TEX. LOCAL GOV'T CODE §172.003(3). For purposes of field of membership, the Group as a whole will be considered to be within the local service area when:**

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

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

(3) **the persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area].** The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing to serve a larger group or there are other operational or management concerns.

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

- (1) members of the family or household of a member of the Group;
- (2) volunteers performing services for or on behalf of the Group;
- (3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;
- (4) spouses of persons who died while in the Group;
- (5) employees of the credit union;
- (6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.

(c) Multiple-groups.

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

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

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

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

(d) Overlap protection.

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

(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility, complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.

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

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

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

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

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

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

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

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

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

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

(e) Underserved communities.

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

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

(2) [(3)] A credit union desiring to add an underserved community must document that the area meets the applicable definition in §91.101 (relating to Definitions and Interpretations). In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The

commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved area.

(f) Parity with Federal Credit Unions.

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

(g) Application.

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

- (1) Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;
- (2) The ability of credit unions to maintain parity and to compete fairly with their counterparts;
- (3) Service by the credit union that is responsive to the convenience and needs of prospective members;
- (4) Protection for the interest of current and future members of the credit union; and
- (5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.

HOME EQUITY LENDING

F. (d) Approve for Publication and Comment Proposed Amendments to 7 TAC, Part 8, Chapter 153 (Home Equity Lending).

BACKGROUND: The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received one informal precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

7 TAC Chapter 153 contains the Texas Finance and Credit Union Commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to specify requirements for electronic disclosures, and (2) to describe Section 50's applicability to out-of-state financial institutions.

RECOMMENDED ACTION: The Rules Committee requests the Commission approve the proposed rule for publication and comment.

RECOMMENDED MOTION: I move that the Commission approve for publication and comment the Proposed Amendments to 7 TAC, Part 8, Chapter 153 concerning Home Equity Lending.

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

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.17 (relating to Authorized Lenders: Section 50(a)(6)(P)), §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)), §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), and §153.51 (Consumer Disclosure: Section 50(g)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to specify requirements for electronic disclosures, and (2) to describe Section 50's applicability to out-of-state financial institutions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received {{insert number}} informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

A proposed amendment to §153.13 describes requirements for providing an electronic copy of the preclosing disclosure. Section 50(a)(6)(M)(ii) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and a final itemized disclosure of amounts that will be charged at closing. The current interpretation at §153.13 refers to these items as the "preclosing disclosure." Proposed new §153.13(4) would explain that the lender may provide the preclosing disclosure electronically in accordance with state and federal law governing delivery of electronic documents, and would include references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

The amendment to §153.13 responds to a request that the commissions received in September 2020, while the commissions were conducting a rule review of Chapter 153. As a result of the rule review, the commissions amended §153.22 to specify that the lender may provide signed documents electronically in accordance with state and federal law. In an official comment, a stakeholder recommended either: (1) adopting a new section to specify that the lender may electronically deliver all notices, disclosures, and documents to the property owner, or (2) amending Chapter 153's individual sections on required disclosures to specify that the lender may electronically deliver each disclosure. Although the commissions and the agencies generally do not object to the use of electronic disclosures, the commissions received this suggestion too late in the rulemaking process to include the proposed changes in the October 2020

adoption of rule review amendments. The commissions indicated that the agencies would revisit this issue in the future. After reviewing the request, the commissions believe that it is appropriate to amend each section of Chapter 153 requiring disclosures individually. This will help ensure that Chapter 153 remains clear with respect to which constitutional provision is interpreted by each section of Chapter 153.

A proposed amendment to §153.17 describes Section 50's applicability to out-of-state financial institutions. Section 50(a)(6)(P) of the Texas Constitution lists the entities that are authorized to make home equity loans, and includes "a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States." Proposed new §153.17(2) specifies that for purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(a)(1)(A)-(D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(a)(1)(A)-(D) are banks (including savings banks), savings and loan associations, and credit unions.

The amendment to §153.17 responds to a request that the agencies received from an out-of-state bank in March 2021. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The commissions believe that proposed new §153.17(2) appropriately answers this

question by referring to provisions of the Texas Finance Code that govern out-of-state financial institutions in Texas.

A proposed amendment to §153.26 describes requirements for electronically signing the acknowledgment of fair market value. Section 50(a)(6)(Q)(ix) of the Texas Constitution requires the lender and the owner to sign a written acknowledgment of the fair market value of the homestead property. Proposed new §153.26(4) would explain that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures. This amendment responds to the same stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.45 describes requirements for providing an electronic copy of the refinance disclosure. Section 50(f)(2)(D) of the Texas Constitution requires the lender to provide a refinance disclosure to the owner if the owner applies for a refinance of a home equity loan to a non-home-equity loan. Proposed new §153.45(4)(E) would explain that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing delivery of electronic documents. This amendment responds to the same stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.51 describes requirements for providing an electronic copy of the consumer disclosure. Section 50(g) of the Texas Constitution requires the lender to provide a consumer disclosure to the owner at least 12 days before closing a home equity loan. Proposed new §153.51(2) would explain that the lender may provide the consumer disclosure

electronically in accordance with state and federal law governing delivery of electronic documents. This amendment responds to the same stakeholder request on electronic disclosures described earlier in this proposal.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will

not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §153.13, §153.17, §153.26, §153.45, and §153.51 to provide additional guidance to lenders. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u),

subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

Chapter 153. Home Equity Lending

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

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

(1) - (3) (No change.)

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic delivery.

(5) [(4)] Bona fide emergency.

(A) - (B) (No change.)

(6) [(5)] Good cause. An owner may consent to receive the preclosing disclosure

or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) - (C) (No change.)

(7) [(6)] An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(8) [(7)] The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

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

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

or a person regulated by this state as a mortgage banker or mortgage company.

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

(2) For purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(a)(1)(A)-(D) that:

(A) is chartered under the laws of another state; and

(B) does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102.

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

(4) [(3)] A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

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

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) - (3) (No change.)

(4) The owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures.

§153.45. Refinance of an Equity Loan: Section 50(f)

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) - (3) (No change.)

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) - (D) (No change.)

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic delivery.

(F) [~~E~~] One copy of the required refinance disclosure may be provided to married owners.

(G) [~~F~~] The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(H) [~~G~~] A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(I) [~~H~~] The Finance Commission will publish a Spanish

translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic delivery.

(3) [~~2~~] Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(4) [~~3~~] A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(5) [(4)] A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(6) [(5)] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

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

Issued in Austin, Texas on August 20, 2021, and August 27, 2021.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

G

FUTURE COMMISSION MEETING

G. Next Commission Meeting – The next regular meeting of the Commission has been tentatively scheduled for November 5, 2021.

ADJOURNMENT

CREDIT UNION DEPARTMENT

INDUSTRY STATUS

AND

DEPARTMENTAL OPERATION

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex

Race	Sex	Annual Salary	Tenure	
ASIAN				
	Summary for M (3 detail records)	\$ 79,692	10.73	Avg
	Summary for 'Race' = ASIAN (3 detail records)	\$ 79,692	10.73	Avg
BLACK				
	Summary for F (5 detail records)	\$ 88,272	7.49	Avg
	Summary for M (2 detail records)	\$ 77,034	6.06	Avg
	Summary for 'Race' = BLACK (7 detail records)	\$ 85,061	7.08	Avg
HISPA				
	Summary for F (5 detail records)	\$ 61,032	11.17	Avg
	Summary for M (1 detail record)	\$ 108,756	4.41	Avg
	Summary for 'Race' = HISPA (6 detail records)	\$ 68,986	10.04	Avg
MULTI				
	Summary for F (1 detail record)	\$ 42,708	2.18	Avg
	Summary for 'Race' = MULTI (1 detail record)	\$ 42,708	2.18	Avg
NHOPI				
	Summary for F (1 detail record)	\$ 37,080	1.32	Avg
	Summary for 'Race' = NHOPI (1 detail record)	\$ 37,080	1.32	Avg
WHITE				
	Summary for M (10 detail records)	\$ 96,103	9.17	Avg
	Summary for 'Race' = WHITE (10 detail records)	\$ 96,103	9.17	Avg
TOTALS				
	28	\$ 81,758	8.47	Avg

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex (ADMIN)

Race	Sex	Annual Salary	Tenure	
HISPA				
	Summary for F (3 detail records)	\$ 55,896	15.01	Avg
	Summary for M (1 detail record)	\$ 108,756	4.41	Avg
	Summary for 'Race' = HISPA (4 detail records)	\$ 69,111	12.36	Avg

MULTI				
	Summary for F (1 detail record)	\$ 42,708	2.18	Avg
	Summary for 'Race' = MULTI (1 detail record)	\$ 42,708	2.18	Avg

NHOPI				
	Summary for F (1 detail record)	\$ 37,080	1.32	Avg
	Summary for 'Race' = NHOPI (1 detail record)	\$ 37,080	1.32	Avg

WHITE				
	Summary for M (4 detail records)	\$ 125,396	7.79	Avg
	Summary for 'Race' = WHITE (4 detail records)	\$ 125,396	7.79	Avg

TOTALS				
	10	\$ 85,782	8.41	Avg

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex (FIELD STAFF)

Race	Sex	Annual Salary	Tenure	
ASIAN				
	Summary for M (3 detail records)	\$ 79,692	10.73	Avg
	Summary for 'Race' = ASIAN (3 detail records)	\$ 79,692	10.73	Avg
BLACK				
	Summary for F (5 detail records)	\$ 88,272	7.49	Avg
	Summary for M (2 detail records)	\$ 77,034	6.06	Avg
	Summary for 'Race' = BLACK (7 detail records)	\$ 85,061	7.08	Avg
HISPA				
	Summary for F (2 detail records)	\$ 68,736	5.41	Avg
	Summary for 'Race' = HISPA (2 detail records)	\$ 68,736	5.41	Avg
WHITE				
	Summary for M (6 detail records)	\$ 76,574	10.09	Avg
	Summary for 'Race' = WHITE (6 detail records)	\$ 76,574	10.09	Avg
TOTALS				
	18	\$ 79,523	8.51	Avg

TEXAS CREDIT UNION DEPARTMENT

Employee Breakout by Experience Level (FIELD STAFF)

Summary for 'EXPLEVEL' = < 1 YEAR

Count	3	\$	49,284	Avg
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Summary for 'EXPLEVEL' = 1 TO 2 YEARS

Count	1	\$	56,304	Avg
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Summary for 'EXPLEVEL' = 2 TO 5 YEARS

Count	1	\$	70,308	Avg
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Summary for 'EXPLEVEL' = 5 TO 10 YEARS

Count	9	\$	78,608	Avg
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Summary for 'EXPLEVEL' = MORE THAN 10 YEARS

Count	4	\$	112,371	Avg
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	18	\$	79,523	Avg
--	----	----	--------	-----

TEXAS CREDIT UNION DEPARTMENT

Current Ethnicity and Sex Breakout

Race	F	M	
WHITE		10	
ASIAN		3	
NHOPI	1		
MULTI	1		
HISPA	5	1	
BLACK	5	2	
	12	16	28
	42.86%	57.14%	



Examiner Turnover by Period

Tuesday, August 17, 2021

9:31:36 AM

09/01/2020

TO

08/17/2021

Reason for Leaving	Count
1	1
10	2
8	1
9	1
	5

Reason Code Definitions

1 - New position with higher pay

2 - Too much travel

3 - Combination of 1 and 2

4 - Perceived lack of opportunity

5 - Relocation

6 - Family situation

7 - Difficulty of position

8 - Other

9 - No reason given

10-Retirement

If multiple reasons use this format:

ex. reasons 1 and 7

"1, 7"

Credit Union Department

Executive Summary

As of 05/31/21

*Information from call report cycle

ACTIVITY	YTD 2019	YTD 2020	2021 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MOVEMENT PROFILE							
Number of CUs	181	177	176	176	176		
Total Assets (Millions)	*43,434	*48,620	*49,462	*50,700	*53,596		
APPLICATIONS (Received)							
Charters	0	0	0	0	0		0
Foreign Branches	1	1	1	0	0		1
Conversions	0	0	0	0	0		0
Mergers	2	6	1	0	1		2
Bylaws	58	77	28	31	17		76
Articles of Incorporation	3	6	0	0	1		1
Total	64	90	30	31	19		80
EXAMINATION ACTIVITIES							
Regular	88	113	26	19	18		63
Joint	63	49	13	11	20		44
Remedial	31	30	10	3	9		22
Total	182	192	49	33	47	0	129
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	1	2	2	2	2		
LUAs	0	0	0	0	0		
Cease & Desist Orders	2	1	2	2	2		
Dividend Restrictions	0	0	0	0	0		
Conservatorships	0	0	0	0	1		
Liquidations	1	1	1	1	1		
Total	4	4	5	5	6	0	
PERSONNEL STAFFING							
Field Examiners	19	18	17	18	18		
Total Personnel	29	29	27	28	28		
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	4,262	4,446	1,043	1,043	1,043		3,129
Actual Expenditures	3,904	3,898	949	835	849		2,633
Gifts and Bequests	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Actual Revenue	4,102	4,363	2,459	0	1,376		3,835

Credit Union Department
Application Activities - Detail

ACTIVITY	4th Qtr 2019	4th Qtr 2020	2021 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
CHARTERS							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: New Applications Filed	0	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	0	0	0	
FOREIGN BRANCH OFFICES							
Pending at Beginning of Period	1	0	1	0	0	0	
Add: New Applications Filed	0	1	0	0	0	0	
Less: Approved	1	0	1	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	1	0	0	0	0	
CONVERSIONS							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: Applications Filed	0	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	0	0	0	
MERGERS							
Pending at Beginning of Period	4	5	2	2	1	0	
Add: Applications Filed	1	1	0	0	1	0	
Less: Approved	2	0	0	1	0	0	
Denied/Withdrawn	0	4	0	0	0	0	
Pending at End of Period	3	2	2	1	2	0	
BYLAWS							
Pending at Beginning of Period	16	0	7	8	1	0	
Add: Applications Filed	8	28	28	31	17	0	
Less: Approved	19	21	27	38	12	0	
Denied/Withdrawn	1	0	0	0	0	0	
Pending at End of Period	4	7	8	1	6	0	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	0	0	1	0	0	0	
Add: Applications Filed	1	1	0	0	1	0	
Less: Approved	0	0	1	0	1	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	1	1	0	0	0	0	

Credit Union Department
Movement Profile - Condition Summary

CAMEL RATING	4th Qtr 2019	4th Qtr 2020	2021 FISCAL YEAR				
			*1st Qtr	*2nd Qtr	*3rd Qtr	*4th Qtr	
1	50	55	55	53	50		
2	110	101	103	107	110		
3	19	18	15	13	13		
4	2	3	3	3	2		
5	0	0	0	0	1		
Total	181	177	176	176	176	0	

* Information from exam master list

Texas Credit Union Department
Enforcement Actions - Detail

TYPE OF ACTION	In Force 8/31/2019	Issued	Activity Terminated	In Force 8/31/2020	Issued	Activity Terminated	In Force 05/31/2021
Determination Letters	0	2	0	2	0	0	2
LUAs	0	0	0	0	0	0	0
Cease & Desist Orders	2	1	2	1	1	0	2
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	0	0	1	0	1	0	1
Liquidations	1	1	0	1	0	0	1
Total	3	4	3	4	2	0	6

Texas Credit Union Department
Examination Activities
Analysis of Current Year

TYPE OF EXAM	Budgeted Number	Actual Number	% Budget	% of Total	% Mailed Within 21 Days
Regular	60	18	90%	10%	100%
Joint	40	20	154%	11%	100%
Remedial	22	9	113%	5%	100%
Total	122	47	115%	29%	100%

Credit Union Department
Movement Profile - Consumer Complaints

CONSUMER COMPLAINTS	YTD 2019	YTD 2020	2021 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
Received	363	350	67	69	94		230
Closed	376	344	69	78	94		241
Avg. Days to Process	15.5	16.75	21	16	12	0	12.25
% Resolved in 30 Days	100%	97%	100%	97%	98%		99%

Texas Credit Union Department
Consumer Complaint - Detail

TYPES OF COMPLAINTS	YTD 2019	YTD 2020	2021 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
LOAN ISSUES							
Collections/Loans	14	15	1		6		7
Denial	0	0					0
Loan Issues	5	11			1		1
Credit Report Issues	89	46	6	14	21		41
Insurance - CPI, GAAP, Property, etc	7	1		1	2		3
ACCOUNT ISSUES							
Discrimination	0	2	1	1			2
Electronic Funds Transfer	10	21	5	5	10		20
Holds on Checks	10	12	4	7			11
Estate/Probate	2	0					0
Fraud/Unauthorized	33	38	18	10	10		38
Fees	26	25	5	6	7		18
Billing Disputes	13	15	9	11	7		27
Other	66	57	8	6	6		20
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	39	32	2	5	3		10
Account Closed/Frozen	8	11	3	6	5		14
Customer Service	38	40	5	6	13		24
Deceptive Advertisment	5	4					0
Vehicle Title	7	5	2		3		5
Website Issues	2	9					0
TOTAL	374	344	69	78	94	0	241

Credit Union Department
Merger/Conversion Finalized

ACTIVITY	YTD 2019	YTD 2020	2021 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MERGERS							
Number:							
State-to-State	1	1					0
Federal-to-State	2	4		1			1
State-to-Federal	1	2					0
Total	4	7	0	1	0	0	1
Assets:							
State-to-State	2,863,489	18,596,591					0
Federal-to-State	69,246,226	2,352,989		136,378,000			136,378,000
State-to-Federal	24,000,070	-					0
Total	96,109,785	20,949,580	0	136,378,000	0	0	136,378,000
CONVERSIONS							
Number:							
Federal-to-State	0	0	0	0	0	0	0
State-to-Federal	0	0	0	0	0	0	0
State-to-Mutual Bank	0	0	0	0	0	0	0
Assets:							0
Federal-to-State		-					0
State-to-Federal							0
State-to-Mutual Bank							0
Total	-	-	0	0	0	0	0

**Credit Union Department
Web Site Statistics
Report Range: 03/01/2021 thru 05/31/2021**

		Number
Total Visits:	Number of Visits	4,873
	Visitors	3,082
	Page Views	10,290
	Number of Repeat Visitors	2,065
	Average Pages per Visit	2.11
	Average Visit Duration	0:02:05
Most Requested Pages:	Home	3,282
	Texas Rules for Credit Unions	948
	Job Postings	513
	Employment	310
	Contact Us	306
Most Downloaded Files:	Rules for Credit Unions	499
	Job Position	132
	Finance Code - Unofficial Compilation of CUs	111
	Press Release 03/06/2021	105
	List of Texas State-Chartered Credit Unions	97

469 CONSOLIDATED REPORT FOR
CREDIT UNION DEPARTMENT

19-Apr-2021

PROCUREMENT CATEGORY	TOTAL EXPENDITURES	TOTAL \$/% SPENT WITH NON HUBS	TOTAL \$/% SPENT WITH HUBS	ANNUAL PROCUREMENT GOAL %
HEAVY CONSTRUCTION	\$00	\$00 / 0.00%	\$00 / 0.00%	11.20%
BUILDING	\$00	\$00 / 0.00%	\$00 / 0.00%	21.10%
SPECIAL TRADE	\$330	\$330 / 100.00%	\$00 / 0.00%	32.90%
PROFESSIONAL	\$00	\$00 / 0.00%	\$00 / 0.00%	23.70%
OTHER SERVICES	\$52,992	\$19,513 / 36.82%	\$33,478 / 63.18%	26.00%
COMMODITY PURCHASING	\$50,402	\$4,839 / 9.60%	\$45,562 / 90.40%	21.10%
	<u>\$103,724</u>	<u>\$24,682 / 23.80%</u>	<u>\$79,041 / 76.20%</u>	

CONSOLIDATED REPORT FOR
THE STATE OF TEXAS

HEAVY CONSTRUCTION	\$4,188,103,413	\$4,114,512,667 / 98.24%	\$155,875,244 / 3.72%	11.20%
BUILDING	\$1,011,022,634	\$967,992,237 / 95.74%	\$166,845,765 / 16.50%	21.10%
SPECIAL TRADE	\$407,732,739	\$347,385,666 / 85.20%	\$88,216,779 / 21.64%	32.90%
PROFESSIONAL	\$769,196,307	\$669,736,462 / 87.07%	\$204,562,752 / 26.59%	23.70%
OTHER SERVICES	\$6,664,166,280	\$6,292,792,347 / 94.43%	\$448,184,311 / 6.73%	26.00%
COMMODITY PURCHASING	\$3,169,362,246	\$2,892,900,575 / 91.28%	\$288,903,694 / 9.12%	21.10%
	<u>\$16,209,583,622</u>	<u>\$15,285,319,957 / 94.30%</u>	<u>\$1,352,588,548 / 8.34%</u>	

469 ** ANALYSIS OF AWARDS FOR
CREDIT UNION DEPARTMENT

CERTIFIED HUB GROUP FOR HUB CREDIT	TOTAL # AND % OF HUB VIDS RECEIVING AWARDS	TOTAL DOLLAR AMOUNT AND % AWARDED TO HUBS
ASIAN PACIFIC	1 / 10.00%	\$7,557 / 9.56%
BLACK	1 / 10.00%	\$721 / 0.91%
HISPANIC	3 / 30.00%	\$2,940 / 3.72%
NATIVE AMERICAN	1 / 10.00%	\$960 / 1.21%
SERVICE-DISABLED VETERAN	0 / 0.00%	\$00 / 0.00%
WOMAN	4 / 40.00%	\$66,861 / 84.59%
TOTAL	<u>10 / 100.00%</u>	<u>\$79,041 / 100.00%</u>

** ANALYSIS OF AWARDS FOR
THE STATE OF TEXAS

CERTIFIED HUB GROUP	# OF VIDS ELIGIBLE FOR HUB CREDIT, %	# OF MALES, %	# OF FEMALES, %	TOTAL # AND % OF HUB VIDS RECEIVING AWARDS	TOTAL DOLLAR AMOUNT AND % AWARDED TO HUBS
ASIAN PACIFIC	1288 / 8.37%	842 / 12.47%	446 / 5.17%	233 / 7.68%	\$190,345,208 / 14.07%
BLACK	3831 / 24.91%	2156 / 31.94%	1675 / 19.41%	338 / 11.15%	\$124,531,804 / 9.21%
HISPANIC	4814 / 31.30%	3334 / 49.39%	1480 / 17.15%	972 / 32.06%	\$458,253,125 / 33.88%
NATIVE AMERICAN	266 / 1.73%	191 / 2.83%	75 / 0.87%	54 / 1.78%	\$19,764,160 / 1.46%
SERVICE-DISABLED VETERAN	227 / 1.48%	227 / 3.36%	0 / 0.00%	42 / 1.39%	\$8,841,657 / 0.65%
WOMEN	4954 / 32.21%	0 / 0.00%	4954 / 57.40%	1393 / 45.94%	\$550,852,591 / 40.73%
TOTAL	<u>15380 / 100.00%</u>	<u>6750 / 100.00%</u>	<u>8630 / 100.00%</u>	<u>3032 / 100.00%</u>	<u>\$1,352,588,548 / 100.00%</u>

** THE ANALYSIS IS BASED ON THE TOTAL # OF VENDOR ID NUMBERS THAT WERE ELIGIBLE TO RECEIVE HUB CREDIT.
TOTAL # OF CERTIFIED HUBS FOR THE PERIOD OF FY2021 IS 15359.

SUCH AS, 1288 (8.37%) OF VID NUMBERS ELIGIBLE TO RECEIVE HUB CREDIT WERE ASIAN PACIFIC OWNED BUSINESSES, 842 (12.47%) WERE ASIAN PACIFIC MALE OWNED BUSINESSES AND 446 (5.17%) WERE ASIAN PACIFIC FEMALE OWNED BUSINESSES. 233 (7.68%) AWARDS WERE MADE TO ASIAN PACIFIC OWNED BUSINESSES, TOTALING \$190,345,208.00 (14.07%) OF THE TOTAL DOLLARS AWARDED TO HUBS.