

CREDIT UNION COMMISSION MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane, Austin, Texas
October 15, 2018

A. CALL TO ORDER - ASCERTAIN A QUORUM – Chair Allyson “Missy” Morrow called the meeting to order at 8:32 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, Beckie Stockstill Cobb, Steven “Steve” Gilman, Sherri Merket, and Jim Minge. Commission Member Rick Ybarra and Assistant Attorney General Melissa Juarez arrived late due to traffic congestion. Commission Members Kay Steward and Yusuf Farran were absent due to scheduling conflicts. Representing the Department staff were Harold E. Feeney, Commissioner; Robert E. Etheridge, Deputy Commissioner; and Joel Arevalo, Director of Information Technology. Chair Morrow appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted in the *Texas Register* (**October 5, 2018, TRD#2018008397**).

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

❖ **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES** – Chair Morrow inquired if there were any requests or motions to excuse an absence. Mrs. Merket moved to excuse Commission Members Yusuf Farran and Kay Stewart from the Commission meeting on October 15, 2018. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

B. RECEIVE MINUTES OF PREVIOUS MEETING (July 13, 2018). The Chair referred the members to the draft minutes of the previous meeting included in the agenda packet. Mr. Gilman moved for approval of the minutes of July 13, 2018 as presented. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

C. PENDING AND ONGOING MATTERS

(a) Discussion, Consideration, and Possible Action to Adopt Proposed Amendments to 7 TAC Section 91.121 Concerning Complaint Notification. Commissioner Feeney reported that the Commission had previously approved for publication and comment proposed amendments to Rule 91.121. Mr. Feeney explained that the proposal generally relates to four areas: (1) how to file a complaint with the Department, (2) how a complaint is handled after receipt, (3) the authority of the Department in reviewing complaints, and (4) the privacy of information provided in a complaint. He indicated that the Department received one written comment supporting the proposed amendments to the rule.

After a short discussion, Mr. Minge moved that the Commission adopt the proposed amendments to **7 TAC Section 91.121** as previously published in the *Texas Register*. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Take Action to Adopt Proposed Amendments to 7 TAC Section 91.403 Concerning Debt Cancellation Products; Federal Parity; Adoption by Reference. Commissioner Feeney noted that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.403. Mr. Feeney explained that the

proposal would update standards governing debt cancellation products to encourage credit unions to provide such products consistent with safe and sound credit union practices and subject to appropriate consumer protections. He further explained that the proposal would adopt and incorporate by reference the guidance issued by NCUA in its Letter to Federal Credit Unions No. 03-FCU-06 and direct credit unions to look to 12 C.F.R. Part 37 for guidance as to best practices related to the offer and sale of debt cancellation products. Mr. Feeney also indicated that the Department received three written comments supporting the proposed amendments to the rule.

After a brief discussion, Mr. Gilman moved that the Commission adopt the proposed amendments to **7 TAC Section 91.403** as previously published in the *Texas Register*. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

Commission member Rick Ybarra arrived at 8:40 a.m.

(c) Discussion, Consideration, and Possible Vote to Take Action to Adopt Proposed Amendments to 7 TAC Section 91.709 Concerning Member Business and Commercial Loans. Commissioner Feeney reported that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.709. Mr. Feeney explained that the amended rule would modify the definition of member business loan (MBL) with respect to 1- to 4- family dwellings to conform with recent amendments to 12 U.S.C. 1757a(c)(1)(B)(i). The amended rule would also provide credit unions parity, under Texas Finance Code Section 123.003, with federal credit unions engaged in the business of making MBLs in Texas. He indicated that the Department received one written comment supporting the proposed amendments to the rule.

After a short discussion, Mr. Minge moved that the Commission adopt the proposed amendments to **7 TAC Section 91.709** as previously published in the *Texas Register*. Mrs. Bayless seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration, and Possible Vote to Take Action to Adopt Proposed Amendments to 7 TAC Section 91.712 Concerning Plastic Cards. Commissioner Feeney reported that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.712. Mr. Feeney explained that the amended rule would allow a plastic card to be activated by logging on to the card issuer/processor's website to go through a member verification process. He indicated that the Department received one written comment supporting the proposed amendments to the rule.

After a brief discussion, Mrs. Bayless moved that the Commission adopt the proposed amendments to **7 TAC Section 91.712** as previously published in the *Texas Register*. Mr. Ybarra seconded the motion and the motion was unanimously adopted.

Assistant Attorney General Melissa Juarez arrived at 8:45 a.m. to serve as legal counsel.

(e) Discussion and Consideration of the Department's FY 2018 Financial Performance and FY 2019 Budget. Commissioner Feeney indicated that FY 2018 operating income totaled \$3,965,819, which was \$97,634 less than the budgeted amount. Mr. Feeney explained that the reasons for the revenue shortfall was because of Commission policies, which require any monies in excess of the Contingency Reserve Fund Cap to be used to reduce the fees paid by credit unions.

At the time of assessing the final installment of the FY 2018 operating fee, the funds in the Contingent Reserves exceeded the Cap by approximately \$98,000. He further explained that during FY 2018, \$3,874,028 was spent operating the Department. Mr. Feeney specifically noted that the Database conversion project had not been completed before the ending of the fiscal year, and the \$50,000 in funds budgeted to finish the project had been automatically carried over to FY 2019.

Mr. Feeney also reported that during the first month of FY 2019, revenues collected totaled \$2,217,625, which was \$38,737 below the budgeted amount. He explained that a few credit unions had been late paying their operating fees, but the first installment of the operating fees had now been collected from all credit unions. He further noted that during the first month of the fiscal year the Department spent \$287,943. Mr. Feeney reminded everyone that most bills are not paid until 30 days after the due date so some of September's operating cost will not be reflected until October.

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

(f) Discussion and Consideration of Current Status of the State Credit Union System. Deputy Commissioner Etheridge indicated that Texas credit unions remain financially and operationally sound as the result of the sound economy in Texas. He further explained that, generally, Texas credit unions continue to perform well and realize positive loan growth, strong asset quality trends, satisfactory earnings performance and stable net worth positions.

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

D. NEW MATTERS

(a) **Discussion, Consideration and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 6, Chapter 95 Concerning Share and Depositor Insurance Protection.** Commissioner indicated that at the July 2016 meeting, the Commission approved a plan which established a date for the required review for each of the Commission's rules. He reported that staff had reviewed 7 TAC, Part 6, Chapter 95 and was recommending that these rules be readopted without change. He explained that the notice of review and a request for comments on the rules in this Chapter was published in the August 10, 2018 issue of the *Texas Register* and no comments were received.

After consideration of the rules, Mr. Gilman moved that the Commission find that the reasons for adopting the rules in **7 TAC, Part 6, Chapter 95** continue to exist and that the Commission readopt the Chapter in its entirety. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(b) **Discussion, Consideration and Possible Vote to Take Action on the Re-adoption of the Department's Equal Employment and Workforce Diversity Plan.** Commissioner Feeney noted that various State laws require the Department to prepare and maintain a written policy statement to assure implementation of a program of equal employment and workforce diversity. He indicated the Commission originally approved a Plan back in 1977 and that the Plan covers a 12-month period, and therefore, must be ratified annually.

After a brief discussion, Mrs. Bayless moved that the Commission re-adopt the Department's Equal Employment and Workforce Diversity Plan as

recommended by Staff. Mr. Minge seconded the motion and the motion was unanimously adopted.

(c) **Examination Pilot Program with NCUA.** Commissioner Feeney explained that since 2017 the Department has been participating in a work group that consists of NCUA, NASCUS and 4 other states. The goal of this Group goals is to facilitate the evolution of certain features in the examination and supervision program. He indicated that the Department plans to be involved in a “pilot program” which will involve a relatively small number of credit unions. The Pilot Program will last several years to provide sufficient time to evaluate the potential benefits. The planned kickoff of the Program should be early 2019.

No formal action was taken by the Commission.

E. COMMITTEE REPORTS – COMMISSIONER EVALUATION COMMITTEE (SEARCH COMMITTEE) REPORT. Mrs. Cobb, Commissioner Evaluation Committee Chairwoman, reported that upon notification of the planned retirement of Commissioner Feeney, the Commissioner Succession Plan became operative and the Committee had assumed responsibility for the processes associated with choosing the next commissioner. Mrs. Cobb reported that on September 14, 2018, the Committee met in an open meeting where, among other things, the Committee reviewed the applications received in response to the job posting for the commissioner position. Three applicants were invited to an initial interview with the Committee. On October 1, 2018, the Committee met in an open meeting for the expressed purpose of interviewing the three applicants. Based upon those interviews, the Committee has referred two candidates to the Commission for final interview for the commissioner position. Mrs. Cobb further explained the Committee had one final responsibility in the succession process and that was to

discuss how the Commissioner Succession Plan worked in practice and whether to recommend to the Commission any changes to the Plan. She noted that the Committee would meet in March to conduct those discussions, however, she did note that eleven of the fourteen applications did not meet the practical experience requirement dictated by the statutes and that no internal candidates applied for the commissioner position. Mrs. Cobb concluded her report by publicly thanking the members of the Committee for their time and active participation in the recruitment efforts.

F. MATTERS RELATED TO THE SEARCH AND SELECTIONS OF A NEW CREDIT UNION COMMISSIONER

(a) Interview One or More Finalist for the Position of Credit Union Commissioner. Mrs. Morrow announced that it was 9:05 a.m., and that the Commission would be going into closed session pursuant to Section 551.074 of the Government Code, to discuss personnel matters under agenda item F(a). She requested that all non-Commission Members leave the room, with the exception of Assistant Attorney General Melissa Juarez, Commissioner Harold E. Feeney, and Recording Secretary Isabel Velasquez. She further explained that the Commission would not reconvene the open session of the meeting until at least 1:00 p.m.

Mrs. Morrow announced that it was 1:56 p.m. and the Commission was back in the open session.

(b) Potential Selection of a New Credit Union Commissioner. Mrs. Morrow inquired if the members had any thoughts, comments, or motions with respect to either of the candidates that were interviewed in the closed session.

Mr. Minge moved that John J. Kolhoff be offered the position of Credit Union Commissioner at an annual salary of \$185,000 with a starting date of December 3, 2018. Mr. Ybarra seconded the motion and the motion passed with six “ayes” and one “no”.

(c) New Commissioner’s FY 2019 Performance Objectives and Goals. Commissioner Feeney noted that Commission policy requires that the commissioner’s evaluation form and performance targets be approved annually by the Commission.

After a brief discussion, Mrs. Cobb moved that the Commission adopt the current evaluation form and the existing performance objectives and goals for the new commissioner. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(d) FY 2019 Budget Implications as a Result of the Potential Hiring of a New Commissioner. Commissioner Feeney indicated that the upcoming transition to a new commissioner would have implications for the Department’s FY 2019 budget. He provided a brief explanation of the potential increase in cost and the need to temporarily authorized an additional FTE.

After a short discussion, Mr. Gilman moved that the Commission temporarily increase the authorized FTE count by one for the month of December, and that the Department’s FY 2019 budget be increased in the amount of \$45,000 and any of the restricted funds that were not used by the Commissioner Evaluation Committee in the search for a new commissioner (estimated to be \$19,800) may be used by the Department to cover the cost associated with the retirement of the commissioner and

the onboarding of the new commissioner. Ms. Bayles seconded the motion and the motion was unanimously adopted.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chair Morrow reminded everyone that the next regular meeting had been tentatively scheduled for March 8, 2019 at 9:00 a.m. and adjourned the meeting at 2:08 p.m.

Allyson “Missy” Morrow
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library