



# **CREDIT UNION COMMISSION MEETING**

*Credit Union Department Building  
914 East Anderson Lane  
Austin, Texas*

**July 14, 2017  
9:00 a.m.**

## **AGENDA**

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.

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**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 Michelle Archie, 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***

- ***Allyson “Missy” Morrow, Chair***
- ***Beckie Stockstill Cobb***
- ***Yusuf E. Farran***
- ***Steven “Steve” Gilman***
- ***Sherri B. Merket***
- ***Jim Minge***
- ***Kay Stewart***
- ***Vik Vad***
- ***Rick Ybarra***

### ***Legal Counsel***

- ***Melissa Juarez***

### ***Staff***

- ***Harold E. Feeney***
- ***Robert W. Etheridge***
- ***Joel R. Arevalo***
- ***Isabel Velasquez***

**FUTURE CREDIT UNION  
COMMISSION MEETING DATES**

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**Friday, November 3, 2017**

**Friday, March 9, 2018**

**Friday, July 13, 2018**

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**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 March 10, 2017 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 March 10, 2017 be approved as presented.

**CREDIT UNION COMMISSION  
MEETING MINUTES  
MARCH 10, 2017**

**A. CALL TO ORDER - ASCERTAIN A QUORUM** – Chair Manuel “Manny” Cavazos called the meeting to order at 9:02 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 Allyson “Missy” Morrow, Beckie Stockstill Cobb, Steven “Steve” Gilman, Yusuf Farran, Sherri Merket, Gary Tuma and Vik Vad. Commission Member Kay Stewart was absent due to a death in the family. Assistant Attorney General Melissa Juarez was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner, Robert E. Etheridge, Deputy Commissioner and Joel Arevalo, Director of Information Technology. Chair Cavazos appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**February 28, 2017, TRD#2017001585**).

❖ **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Chair Cavazos 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 Cavazos inquired if there were any requests or motions to excuse an absence. Mrs. Morrow moved to excuse Commission Member Kay Stewart

from the Commission meeting on March 10, 2017. Mrs. Merket seconded the motion, and the motion was unanimously adopted.

- ❖ **B. RECEIVE MINUTES OF PREVIOUS MEETING (November 4, 2016).** The Chair referred the members to the draft minutes contained in the agenda packet. Mr. Gilman moved for approval of the minutes of November 4, 2016 as presented. Mrs. Merket seconded the motion, and the motion was unanimously adopted.

### **C. PENDING AND ONGOING MATTERS**

**(a) Discussion and Consideration of the Department's FY 2017 Budget and Financial Performance.** Commissioner Feeney briefly highlighted the financial performance indicating that for the first five months of FY 2017 total revenues were \$2,065,185 which was \$5,423 more than the budgeted amount. He also explained that during the same period \$1,484,610 was spent operating the Department, which was approximately 93% budgeted expenses for the period.

Mr. Feeney also reported that the HVAC replacement project continues to move slowly. The project has been posted three times for bids with no response.

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

**(b) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department.** Deputy Commissioner Etheridge reported that the business environment continues to reflect improvement as the overall Texas economy remains sound. He indicated that Texas credit unions, in general, are performing

well and continue to realize positive loan growth, strong asset quality trends, good earnings performance and sound net worth positions. While some economic challenges exist in certain geographic areas, the Department remains optimistic that the Texas economy will continue to have a positive impact on the Texas credit union system.

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

**(c) Discussion and Consideration of the State Auditor's Audit Report (17-014) on the Credit Union Department: A Self-Directed, Semi-Independent Agency.** Commissioner Feeney provided background information and briefly summarized the audit findings. He reported that all recommendations had been addressed with the exception of the Information Technology policies and procedures, which are expected to be completed by the end of June 2017.

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

#### **D. NEW MATTERS**

**(a) Discussion and Consideration and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 6, Chapter 97 (relating to Commission Policies and Administrative Rules).** Commissioner Feeney explained that Section 2001.039, Government Code, requires a state agency to review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. He noted that, at the July 2016 meeting, the Commission approved a plan which establishes a date for the required review of each existing rule. In accordance with

that plan, he reported that staff has reviewed Chapter 97 and believes that certain revisions are appropriate and necessary. Mr. Feeney noted that the recommended amendments to Chapter 97 will be presented separately for consideration. He explained that notice of review and a request for comments on these rules were published in the December 16, 2016 issue of the *Texas Register* and that no comments were received. He further indicated that staff believes that the reasons for adopting the noted rules continue to exist and is recommending that the Commission approve and adopt the rule review of Chapter 97.

After further consideration of the rules, Mr. Tuma moved that the Commission find that the reasons for adopting Chapter 97 continues to exist and that the Commission re-propose and readopt these rules. Mr. Vad seconded the motion and the motion was unanimously adopted.

**D. (b) Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment on Repeal of 7 TAC Section 97.104 Concerning Petitions for Adoption or Amendment of Rules.** Commissioner Feeney reported the proposed repeal of this rule is a result of the Department's general rule review. He indicated that greater clarity and ease of use could be achieved if the existing 7 TAC Section 97.104 was updated and relocated to a new subchapter.

After a short discussion, Mr. Gilman moved that the Commission approve for publication and comment in the *Texas Register* the proposed repeal of 7 TAC Section 97.104. Mrs. Cobb seconded the motion and the motion was unanimously adopted.



**D. (c) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment on New Subchapter F of 7 TAC, Part 6, Chapter 97 Concerning Rulemaking.** Commissioner Feeney noted that the new Subchapter F was being proposed to comply with the provisions of Government Code §§2001.021 and 2001.029. He indicated that these sections require a state agency to prescribe procedures for the submission, consideration, and disposition of a petition to initiate rulemaking and to provide an opportunity for an interested person to request a public hearing on a substantive rule change. Mr. Feeney explained that the new proposed Rule 97.500 would replace existing Rule 97.104. The proposed new rule would set out the procedure for an interested person to petition the Department to initiate rulemaking proceedings. He further explained that the new proposed Rule 97.501 would implement the provisions related to conducting a requested public hearing. The proposed new rule would authorize the commissioner or his designee to hold such a hearing and set appropriate processes and procedures.

Commission Member Gilman expressed support for the efforts to increase transparency and the improved ease of use pertaining to these proposed new rules.

After further discussion, Mrs. Merket moved that the Commission approve for publication and comment in the *Texas Register* the proposed new 7 TAC Sections 97.500 and 97.501 (7 TAC, Part 6, Chapter 97, Subchapter F) relating to rulemaking proceedings and hearings on proposed substantive rules. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

**D. (d) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 97.105 Concerning Frequency of Examination.** Commissioner Feeney explained that the propose amendments to Rule 97.105 were a result of the Department's general rule review and were intended to clarify authorities, processes, and expectations with respect to the frequency of examinations. He noted that the proposed amendments should better capture the expressed intention of the Commission and the current practices of the Department.

After a short discussion, Mr. Vad moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 97.105 related to frequency of examination. Mr. Gilman seconded the motion and the motion was unanimously adopted.

**D. (e) Discussion, Consideration, and Possible Vote to Approve and Authorize the Submission of the Department's Annual Risk Assessment Report for FY 2017 as Required by Section 2102.004, Government Code.** Commissioner Feeney noted that Government Code Section 2102.013 requires certain state agencies to conduct a formal internal risk assessment each year and submit the assessment to the State Auditor's Office. He indicated that staff had completed the internal risk review for 2017 and had prepared a written assessment of the risks along with the controls the Department has in place to mitigate those risks for submission to the State Auditor's Office.

After a brief discussion, Mrs. Morrow moved that the Commission approve the Department's Internal Risk Assessment Report for 2017 and authorize its

submission to the State Auditor's Office. Mr. Tuma seconded the motion and the motion was unanimously adopted.

**D. (f) Discussion, Consideration, and Possible Vote to Conditionally Permit the Deputy Commissioner to Remain Indebted, as a Borrower, to a Federal Credit Union that has Subsequently Converted to a State-Chartered Credit Union.** Commissioner Feeney noted that the Commission has established a policy which specifically provides that neither the Commissioner nor the Deputy Commissioner may be a member of, or be indebted to, any credit union under the Department's jurisdiction. As a result of the conversion of Amplify Federal Credit Union to a Texas charter on January 1, 2017, an unintentional violation of this policy resulted as the Deputy Commissioner was a member and had both a boat loan and Home Equity Line of Credit Union with the federal credit union. He explained that in view of the fact that the indebtedness were contracted before the credit union came under the Department's jurisdiction, the Deputy Commissioner was seeking the Commission's consent to keep his existing loans with Amplify Credit Union. Mr. Feeney further noted that staff was recommending that the Commission authorize the Deputy Commissioner to maintain his existing borrowing relationship with Amplify Credit Union provided that no future modifications are made or additional funds advanced on either indebtedness.

After a short discussion, Mrs. Morrow moved that the Commission approve the requested exception to policy as recommended by staff. Mrs. Merket seconded the motion and the motion was unanimously adopted.

**D. (g) Discussion, Consideration, and Possible Vote to Take Action to Approve the Proposed Amendments to the Commission's Policies Manual, as Part of its Annual Policy Review, to Revise the Ethics Standards Policy to Include an Exception to the Specific Restriction Related to a Indebtedness by Department Employees.** Commissioner Feeney explained that in accordance with Commission Policy, the Commission is required to review its policies manual at least once each year. In preparation for the Commission's review, staff has examined the various policies and was recommending changes to Subsection F, Section XV, Ethics Standards. He clarified that the suggested changes would provide an exception to the prohibition on indebtedness to a credit union or affiliate for certain employees if such indebtedness was permissible when incurred and become prohibited as a result of employment by the Department or circumstance over which the employee has no control. Mr. Feeney also noted that it was recommended that the criteria for restricting an examiner from examining a credit union be expanded to include past employment, pension interest, and relatives working in the institution.

After a brief discussion, Mr. Gilman moved that the record reflect that the Commission reviewed its policies manual and approved the proposed changes as recommended by staff. Mrs. Cobb seconded the motion and the motion was unanimously adopted.

**D. (h) Discussion, Consideration, and Possible Vote to Take Action on the General Budget Assumptions and Parameters to be used in Guiding the Development of the Department's FY 2018 Budget.** Commissioner Feeney indicated that the Finance Code Section 16.003 gives the Commission exclusive responsibility for approving the Department's budget each year. He noted that the

budget is scheduled to be considered at the next meeting and that staff had drafted suggested budget guidelines for the Commission's consideration.

Commission Member Gilman encouraged staff, in the budget development, to explore ways to start moving the agency towards a virtual examination. He indicated that using analytics and performing risk assessment from a remote location would lessen the travel burdens on the examination staff and facilitate interim reviews between examinations.

Commission Member Vad requested that the budget proposal include a more in depth breakdown of the cost associated with the Department's electronic document management system and any information technology upgrades/replacements.

After further discussion, Mr. Tuma moved that the Commission adopt the proposed budget assumptions and parameters for FY 2018 as recommended by Staff. Mr. Gilman seconded the motion and the motion was unanimously adopted.

**D. (i) Discussion, Consideration, and Possible Vote to Adopt Resolutions Commemorating Amplify Credit Union, Lone Star Credit Union, Shared Resources Credit Union, and Reeves County Teachers Credit Union for their Contributions to the Citizens of Texas on the Respective Milestone Anniversary Dates of their Origin.** Commissioner Feeney noted that in accordance with the provisions of the Commission's Policies Manual, the Commission may adopt resolutions honoring credit unions for reaching certain milestones dates. In accordance with the criteria detailed in the policy, staff was presenting four resolutions for the Commission's consideration.

After a brief discussion, Mr. Yusuf moved that the Commission adopt the Resolutions Commemorating **Amplify Credit Union, Lone Star Credit Union, Shared Resources Credit Union, and Reeves County Teachers Credit Union** for their Contributions to the Citizens of Texas on the Respective Milestones Anniversary of their Origin and that a copy of the appropriate resolutions be mailed to the credit unions. Mrs. Merket seconded the motion and the motion was unanimously adopted.

**D. (j) Discussion, Consideration, and Possible Vote to Take Action on a Resolution to Acknowledge the Retirement of Richard L. Ensweiler, President and CEO of the Cornerstone Credit Union League.** Commissioner Feeney indicated that Mr. Ensweiler would be retiring from the credit union movement after more than five decades of service – 22 years as the President/CEO of the Texas Credit Union League and its successor organization Cornerstone Credit Union League. Mr. Feeney noted that Mr. Ensweiler has been an effective advocate for credit unions and a stalwart supporter of a safe, sound, and competitive credit union system in Texas.

After a short discussion, Mr. Tuma moved that the Commission adopt the Resolution acknowledging Richard Ensweiler's retirement and that a copy of the resolution be given to him as a token of our appreciation for his many years of service to Texas credit unions. Mrs. Morrow seconded the motion and the motion was unanimously adopted.

**D. (k) Discussion and Consideration of Legislative Issues and Activities Relating to the 85<sup>th</sup> Regular Session that may Impact the Department or Credit Unions under its Jurisdiction.** Commissioner Feeney indicated that the pace of the Session should be picking up now that it has reached the 60<sup>th</sup> day and the bill filing deadline. He reported that the Department is currently monitoring a number of bills that could potentially impact either the Department or credit unions and noted that May 29 would be the last day of the 85<sup>th</sup> Regular Session.

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

**Next Commission Meeting** – Chairman Cavazos reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for July 14, 2017 at 9:00 a.m. in Austin.

**ADJOURNMENT** – There being no further business for the Credit Union Commission, Chairman Cavazos adjourned the meeting at 10:07 a.m.

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Allyson “Missy” Morrow  
Chairman

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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 06-15-17)
<b><u>March 10, 2017</u></b>		
Chapter 97, Subchapter A General Provisions	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 03/24/17
Chapter 97, Subchapter B Fees	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 03/24/17
Chapter 97, Subchapter C Department Operations	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 03/24/17
Chapter 97, Subchapter D Gifts and Bequests	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 03/24/17
Chapter 97, Subchapter E Advisory Committees	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 03/24/17
7 TAC Section 97.104 Petitions for adoption or Amendment of Rules (Repeal)	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 03/24/17
Chapter 97, New Subchapter F Rulemaking (97.500 and 97.501)	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 03/24/17
7 TAC Section 97.105 Frequency of Examination	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 03/24/17
<b><u>April 6, 2017</u></b>		
Chapter 91, Subchapter A General Rules	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 04/21/17



## FOLLOW-UP ACTION REPORT CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 06-15-17)
Chapter 91, Subchapter B Incorporation Procedures	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 04/21/17
Chapter 91, Subchapter J Mergers/Consolidations	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 04/21/17
Chapter 91, Subchapter L Submission of Comments by Interested Parties	Published in <i>Texas Register</i> with a 30 day comment period.	Published in <i>Texas Register</i> on 04/21/17

C

## **COMMISSIONER EVALUATION COMMITTEE REPORT**

The Commissioner Evaluation Committee is a standing committee of the Commission. The Committee will report on their activities and recommendations to the Commission.

- (a) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve the Commissioner's FY 2018 Performance Objectives and Goals.
- (b) Discussion of the Procedures to be Utilized for the Commissioner's FY 2017 Performance Review.

**RECOMMENDED ACTION:** The Department requests that the Commission accept the Committee's report as presented.



**CREDIT UNION COMMISSION**  
**Commissioner Evaluation Committee Meeting**  
*Credit Union Department Building*  
*914 East Anderson Lane*  
*Austin, Texas*

**Thursday, July 13, 2017**  
**2:30 p.m.**

\* \* \* **AGENDA** \* \* \*

- I. Call to Order (2:30 p.m.) – Committee Chair Sherri Merket
  - a. Ascertain Quorum
  - b. Appoint Recording Secretary
  - c. Acknowledge Guests
- II. Receive and Approve Minutes of the Committee’s Meeting on November 3, 2016
- III. New Business
  - a. Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve the Commissioner's FY 2018 Performance Objectives and Goals
  - b. Discussion and Consideration of a Tentative Date for Next Committee Meeting (November 2, 2017)

**Adjournment**

**Note:** This is a meeting of the Commissioner Evaluation Committee of the Credit Union Commission; however, there may be other members of the Credit Union Commission attending this meeting. Since there might be a quorum of the Commission attending this meeting of the Commissioner Evaluation Committee, it is being posted as a meeting of the entire Commission.

**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 Linda Clevlen, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752--(512) 837-9236, as far in advance of the meeting as possible.

# **Performance Review Texas Credit Union Commissioner Instructions**

The Commissioner review is a management-by-objectives program. The overall objective of this program is to align organizational goals and objectives with performance review and compensation.

## **Part I - Board Assessment**

The Commission's Assessment is designed primarily to provide feedback to the Commissioner from each Commission member about his/her perception of the Commissioner's effectiveness.

Part I is totally subjective. As such, the weight assigned to this part of the review **should not exceed** 25% of the total review.

Each Commission member is asked to complete the Assessment Form annually and return it to the Chairman of the evaluation committee approximately one month prior to the scheduled review with the Commissioner. Data from each Commission member is compiled onto one form and shared with the Commissioner during the review.

## **Part II - Performance Objectives**

The performance objectives section is a critical part of the Commissioner's performance review. Performance objectives are developed from the Department's strategic business plan and the plan year budget. These objectives are measurable/observable indicators that bridge the philosophy of the Texas Credit Union Department with measurable results.

Goals set for the objectives should be achievable. The best way to set goals is to look at absolute and relative measures. An absolute measure would be one in which the goal is established based on the Department's actual results. For example, if the goal is to have all state chartered credit unions examined within 18 months of the effective date of the last exam, and the result of that goal is usually 95%, a relative goal would be to have 100% of all credit unions examined within an 18 month period.

Part II is objective, in that achievement of results is verifiable, preferably measurable. This section of the review should be assigned the most weight.

## **Part III – Special Projects**

The Special Projects section incorporates key, non-measurable strategies from the Department's strategic plan and annual operating plan & budget. Major projects and plans would be indicative of special project goals.

Individual Commission members are to evaluate results for each of the key strategies and submit their evaluations to the Chairman of the evaluation committee. **The Commissioner will provide Commission members with periodic updates regarding progress on each of the strategies throughout the plan**

year, as well as written documentation on the final results shortly after the conclusion of the plan year. Each Commission member's evaluation is compiled onto one form and incorporated into the overall review.

The sum of the weights assigned to Parts I, II, and III should equal 1.00.

### **Monitoring Results**

We encourage everyone to track and review results throughout the year. Often during the course of a year, changes in the environment that are outside the control of the Commissioner may make it necessary to modify a goal. By reviewing the goals and progress toward meeting them on a quarterly basis, you can identify these situations and take action to modify them before the end of the plan period.

### **Final Review**

The Chairman of the evaluation committee or his/her designate is responsible for distributing, collecting and compiling Assessment Forms (Parts I & III) from each Commission member. Normally, this process will begin approximately two months prior to the scheduled review date.

The Commissioner is responsible for reporting results from the Performance Objectives section of the plan. Since many of the results will be dependent on final financial reports, results should be provided to the Board within 15 days after the end of the plan period. The completed review will be given to the Commissioner during a formal performance review process when all data is known and calculated. The Chairman of the evaluation committee (and/or one of his/her designates) will meet with the Commissioner to give the formal review.

### **Time Table**

The performance review should cover a Fiscal Year (September 1 through August 31). Each Commission member will receive electronic copies of both the Evaluation Form and a memorandum from the Commissioner outlining the Department's plan period accomplishments by September 15<sup>th</sup>.

It is important to create performance objectives for the new plan period before the end of the current plan. It is recommended that the performance objectives and goals for the next plan period be established in the last quarter of the current plan period.

### **Commissioner Compensation**

The Commission has undertaken a market-based compensation strategy for the position of commissioner with an end objective of hiring and retaining a highly qualified commissioner to effectively and professionally discharge the duties of the agency.

The position of commissioner is the only position at the agency that is exempt from the State's Position Classification Plan. As the executive officer of the agency, the guidelines for the position's salary range are detailed in the Schedule of Exempt Positions, Article IX, Section 3.04,

General Appropriations Act (84th Legislature). The exact salary group for the position and the compensation paid to the incumbent is determined by the Commission after review of performance and salary comparisons through reports such as the State Auditor's Office August 2014 Report on Executive Compensation at State Agencies (Report No. 14-705) and comparable salary information of selected positions at state and federal regulatory agencies with similar responsibilities.



**CREDIT UNION DEPARTMENT  
COMMISSIONER EVALUATION FORM  
FY \_\_\_\_\_**

Name: \_\_\_\_\_

Date Employed \_\_\_\_\_ Date of Last Evaluation \_\_\_\_\_

**I. 20\_\_ Commission Assessment**

Average results from the Commission Assessment Tally Sheet (Part I Attached) are:

$$\frac{\text{Average Points (Part I Average)}}{\text{Average Points (Part I Average)}} \times \frac{25\%}{\text{Weight}} = \frac{\text{Part I Score}}{\text{Part I Score}}$$

**II. 2014 Performance Objectives**

Average results from the Texas Credit Union Department Performance Grid (Part II Attached) are:

$$\frac{\text{Average Points (Part II Average)}}{\text{Average Points (Part II Average)}} \times \frac{75\%}{\text{Weight}} = \frac{\text{Part II Score}}{\text{Part II Score}}$$

**III. 2014 Special Projects**

Average results from the Texas Credit Union Department Performance Grid (Part III Attached) are:

$$\frac{\text{Average Points (Part III Average)}}{\text{Average Points (Part III Average)}} \times \frac{0\%}{\text{Weight}} = \frac{\text{Part III Score}}{\text{Part III Score}}$$

**IV. Final Evaluation Score:**

\_\_\_\_\_  
Final Evaluation Score

**\* The total of the weights must equal 100%**



## BASE PAY ADJUSTMENT

A base pay adjustment earned for a performance level achieved is strictly at the discretion of the Commission.

<b>Current Base Pay:</b>		\$	_____
<b>Pay Adjustment:</b>	_____ %	\$	_____
<b>New Base Pay:</b>		\$	_____
<b>Effective Date:</b>	_____		

**Additional Comments:** \_\_\_\_\_

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**Commissioner Comments:** \_\_\_\_\_

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\_\_\_\_\_  
**Commissioner Signature & Date**

\_\_\_\_\_  
**Evaluation Chair Signature & Date**

**Part I**  
**Credit Union Department**  
**Commission Member Assessment Form**

**Commission Member:** \_\_\_\_\_

**Below are comments attributed to the Credit Union Commissioner. Please indicate your agreement or disagreement with the statement as follows:**

<b>Strongly</b> <b>Disagree</b>		<b>Agree</b>		<b>Strongly</b> <b>Agree</b>
1-----	2-----	3-----	4-----	5

**1. The Commissioner is effective at identifying strategic long-term needs of the Department and developing and implementing plans that result in achievement of these needs. Able to execute independent action and starts working without supervision.**

**Rating:** \_\_\_\_\_

**Comments:**

**2. I am satisfied with the level, quality and timeliness of information and communications provided to me by the Commissioner. This includes issues that may arise between Commission meetings of which the Commission should be aware.**

**Rating:** \_\_\_\_\_

**Comments:**

**3. The level to which the Commissioner directs or influences the operations, activities and performance of all subordinates. Demonstrates an atmosphere of teamwork and ability to motivate others to accomplish their goals. Ensures that the most efficient use is being made of all resources, including staff.**

**Rating:** \_\_\_\_\_

**Comments:**

**4. The Commissioner provides adequate focus on maintaining effective relationships with the governor's office, legislators and Credit Union leaders to ensure the continued safety and soundness of the credit union industry. Works well with NCUA to coordinate efforts for compliance and NASCUS for continued accreditation.**

Rating: \_\_\_\_\_

Comments:

**5. The Commissioner has the technical knowledge necessary to complete the job. Has the capability to hire the necessary personnel to move the department forward to save time and money, while still ensuring the safety of the information that is necessary to examiners to complete their assignments.**

Rating: \_\_\_\_\_

Comments:

**6. The Commissioner maintains a professional image at all times while representing the Department. The necessary leadership skills are present to command attention and respect, while displaying confidence in their ability.**

Rating: \_\_\_\_\_

Comments:

**Other Comments on the Commissioner's performance this past period:**

**SUM OF RATINGS:** \_\_\_\_\_

**AVERAGE POINTS:** \_\_\_\_\_

## II. PERFORMANCE OBJECTIVES

For each performance category, assign a rating from 1 to 5 based on the performance rating definitions described at the bottom of the form. Next, multiply the rating assigned by the weight shown and enter the result in the "weight x rating" box (i.e. 25% x 5 = 1.25).

PERFORMANCE OBJECTIVES	ACHIEVEMENT	W E I G H T	R A T I N G	W R E A T I N G
1. Production		25%		
2. Administration		25%		
3. Budgetary		15%		
4. Legislative		25%		
5. Industry		10%		
Total Score				

**PERFORMANCE RATINGS:** The annual review will be classified in one of the following areas.

- 1. UNSATISFACTORY:** Employee is not performing the minimum requirements of the responsibility area in a satisfactory manner. Performance meets few or none of the key goals/standards. Improved performance is required for continuation in the position.
- 2. BELOW REQUIREMENTS:** Employee is not consistently performing all the requirements of the responsibility area. Performance is below expectations showing consistent weakness. Improved performance is necessary. Requires more than expected supervision.
- 3. MEETS REQUIREMENTS:** Employee is performing all requirements of the responsibility area. Performance is standard, although some requirements are performed above expectations and occasionally below. Performance meets most key goals/standards. Fully competent performer.
- 4. EXCEEDS REQUIREMENTS:** Employee is performing most requirements of the responsibility area consistently above expectations and significantly exceeds some requirements. Requires less supervision than expected.
- 5. SIGNIFICANTLY EXCEEDS REQUIREMENTS:** Employee is consistently performing all requirements of the responsibility area significantly above expectations. There are no weaknesses on key goals/standards. Makes significant contributions well beyond job demands.

## **Part II. Performance Objectives**

### **1. Production**

- Intervals between the effective dates of CU examinations shall not exceed 18 months.
- E-Time ratio shall not be less than 65% of available work time.
- 100% of reports of examination should be mailed within 21 days of last date on site.
- 100% applications submitted will be approved/denied not later than the 60<sup>th</sup> day after the date notice is published in the *Texas Register*.
- 100% of complaints will be responded to within 45 days.
- 100% of rule changes will be provided to credit unions within 60 days of adoption.
- Meet or exceed 90% of the Operating Plan's production targets within +/- 5% of the projected target.

### **2. Administration**

- Attain and maintain at least 95% staffing level with continued.
- Participate in no less than 2 job fair events within the plan period.
- Post job vacancies within 7 days of notice of upcoming vacancy.
- Non-retirement turnover not to exceed 15% for plan period.
- Continue in the implementation and assimilation technology changes to increase efficiency.
- Conduct an annual examiner conference to ensure examiners receive adequate training to perform their duties.

### **3. Budgetary**

- Ensure agency expenditures are necessary, prudent, and within budgetary constraints.
- Present quarterly financial statements to Commission and post on agency website
- Ensure compliance with all regulatory requirements for a SDSI agency
- Ensure revenues collected are adequate to cover expenditures and provide a cash reserve that complies with Commission policies.

### **4. Legislative**

- Submit SDSI biennial and annual report filings in a timely manner.
- Prepare materials for the Legislature as requested or required.
- Respond timely to new legislative issues or requests for information or testimony.
- Remain active and involved at the national level on supervisory issues affecting credit unions.
- Attend at least one conference or training meeting during the plan period.
- Monitor and modify Texas Administrative Code rules as necessary.

### **5. Industry**

- Continue to develop effective communication with credit unions and interested department stakeholders.
- Maintain an ongoing awareness of credit union risk profiles and the condition of the economy.
- Maintain continued accreditation from the National Association of State Credit Union Supervisors
- Publish a monthly newsletter for the industry
- Issue Interpretations and opinions within 30 days of request
- Share monthly accomplishment report with Commission Members
- Share periodic report as needed with Commission Members

**Part III**  
**Special Projects/ Other Non-Quantifiable Objectives**

<b>Commission Member:</b> _____					
Objectives	Weight	(1) Low Achievement	(2)	(3) Medium Achievement	(4)  (5) High Achievement
		( )	( )	( )	( )

D

## **PENDING AND ONGOING MATTERS**

Six pending items from previous meetings 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) the repeal of 7 TAC Section 97.104 concerning petitions for adoption or amendment of rules;
- (b) the adoption of new Subchapter F of 7 TAC, Part 6, Chapter 97 concerning rulemaking;
- (c) the adoption of amendments to 7 TAC 97.105 concerning frequency of examination;
- (d) the department's FY 2017 budget and financial performance;
- (e) the status of the state credit union system; and
- (f) the legislative issues and activities relating to the 85<sup>th</sup> regular session that may impact the department or credit unions under the department's jurisdiction.

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



**PETITIONS FOR ADOPTION OR AMENDMENT OF RULES**

**D. (a) Discussion, Consideration, and Possible Vote to Take Action on the Repeal of 7 TAC Section 97.104 Concerning Petitions for Adoption or Amendment of Rules.**

**BACKGROUND:** At its March meeting, the Commission approved for publication and comment in the *Texas Register* the proposed repeal of Rule 97.104. One comment was received supporting the proposed repeal.

In general, the purpose of the repeal of the rule is to implement changes resulting from the Commission's review of Chapter 97 under Texas Government Code Section 2001.039. The rule is being replaced by Section 97.500, which is being proposed for adoption later in this agenda packet.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt the repeal of 7 TAC Section 97.104.

**RECOMMENDED MOTION:** I move that we adopt the repeal of 7 TAC Section 97.104.

## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 97. Commission Policies and Administrative Rules

##### Subchapter A. General Provisions

The Credit Union Commission (Commission) adopts the repeal of Texas Administrative Code Title 7, Section 97.104, Petitions for Adoption or Amendment of Rules without changes to the proposal as published in the March 24, 2017 issue of the *Texas Register* (42 TexReg 1312).

In general, the purpose of the repeal of the rule is to implement changes resulting from the commission's review of Chapter 97 under Texas Government Code Section 2001.039. The rule is being replaced by Section 97.500, which is being adopted as published elsewhere in this issue of the *Texas Register*.

The department received one comment supporting the proposed repeal.

The repeal is adopted under Section 15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Finance Code.

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

The specific sections affected by the amendments are Texas Finance Code, 15.402 and Texas Government Code 2001.039.

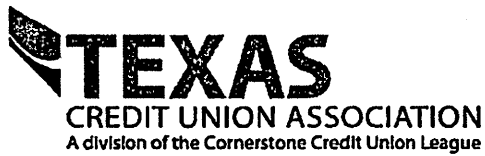
**~~§97.104. Petitions for Adoption or Amendment of Rules.~~**

~~(a) — An interested party may submit a petition to the Department to adopt or amend a rule pursuant to Government Code, <\*>2001.021. The petition must be in writing, must be directed to the commissioner, and must include:~~

- ~~(1) — a brief explanation of the proposed rule or of the proposed amendment to the rule;~~
- ~~(2) — the full text of the proposed rule, or, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and~~
- ~~(3) — any additional information the commissioner may request.~~

~~(b) — If the petition complies with the requirements of subsection (a) of this section, the Department shall notify the applicant that the petition has been accepted for filing and will be processed in accordance with subsection (c) of this section. If the petition does not comply, the Department shall notify the applicant in writing of the deficiencies and give the applicant an opportunity to cure them by filing an amended petition. If the applicant does not file an amended petition curing the deficiencies by 5:00 p.m. on the 15th day following the date that the Department mailed a notice of deficiencies to the applicant, the petition shall be deemed denied for the reasons stated in the deficiency notice without the necessity of further action.~~

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



April 20, 2017

The Honorable Harold Feeney  
Commissioner  
Texas Credit Union Department  
914 East Anderson Lane  
Austin, TX 78752-1699

Dear Commissioner Feeney :

The Texas Credit Union Association has reviewed the proposed changes to Sec. 97.104 and the new subchapter F of 7 TAC, Chapter 97 regarding the process for petitions to initiate rulemaking proceedings.

We also reviewed the proposed changes to 7 TAC Section 95.105 clarifying that examinations will be conducted at least once within a 12 month period rather than within a calendar year, and the possible extension of the exam interval to 18 months.

These changes should prove beneficial, allowing credit unions in good standing to focus on the core mission of serving their members while providing the public greater ability to provide input to the Commission on regulatory matters.

Respectfully,

A handwritten signature in black ink, appearing to read "Jeff Huffman", followed by a long horizontal line extending to the right.

Jeff Huffman  
President  
Texas Credit Union Association

## **RULEMAKING**

### **D. (b) Discussion, Consideration, and Possible Vote to Take Action on the Adoption of New Subchapter F of 7 TAC, Part 6, Chapter 97 Concerning rulemaking.**

**BACKGROUND:** At its March meeting, the Commission approved for publication and comment in the *Texas Register* the proposed new Rules 97.500 and 97.501. One comment was received supporting the adoption of the proposed new rules.

In general, the purpose of the adoption of the new subchapter regarding rulemaking is to implement changes resulting from the Commission's review of Chapter 97 under Texas Government Code Section 2001.039. The new subchapter contains two new rules which describe procedures for petitions to initiate rulemaking proceedings and hearings on proposed rules. The new rules are adopted to comply with the provisions of Government Code Sections 2001.021 and 2001.029, which requires a state agency to prescribe the procedures for the submission, consideration, and disposition of a petition to initiate rulemaking and provide an opportunity for a public hearing before the agency adopts a substantive rule.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt the new rules as published.

**RECOMMENDED MOTION:** I move that we adopt the new Rules 97.500 and 97.501 without changes to the proposed text as published in the *Texas Register*.

## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 97. Commission Policies and Administrative Rules

##### Subchapter F. Rulemaking

The Credit Union Commission (Commission) adopts new Subchapter F of 7 TAC, Chapter 97, concerning rulemaking, without changes to the proposed text as published in the March 24, 2017 issue of the Texas Register (42 TexReg 1313). The new subchapter will not be republished.

In general, the purpose of the adoption of the new subchapter regarding rulemaking is to implement changes resulting from the commission's review of Chapter 97 under Texas Government Code Section 2001.039. The new subchapter contains two new rules which describe procedures for petitions to initiate rulemaking proceedings and hearings on proposed rules. The new rules are adopted to comply with the provisions of Government Code Sections 2001.021 and 2001.029, which requires a state agency to prescribe the procedures for the submission, consideration, and disposition of a petition to initiate rulemaking and provide an opportunity for a public hearing before the agency adopts a substantive rule.

Section 97.500, Petitions to Initiate Rulemaking Proceedings, replaces Section 97.104, which the Commission repealed, as published elsewhere in this issue of the *Texas Register*. The new rule sets out the procedure for an interested person to petition the Department to initiate rulemaking proceedings.

Section 97.501, Hearings on Proposed Rules, implements the provisions of Government Code Section 2001.029, which requires a state agency to grant an opportunity for a public hearing before it adopts a substantive rule, under certain circumstances, if a public hearing is requested. The new rule authorizes the commissioner or his designee to hold these hearings and set appropriate hearing processes and procedures.

The department received one comment supporting the adoption of the proposed new rules.

The new rules are adopted under the provisions of the Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Government Code Sections 2001.021 and 2001.029, which direct the Commission to adopt rules for an interested person to petition the Department to initiate rulemaking proceedings and which provide an opportunity for a public hearing before the agency adopts a substantive rule.

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

## Subchapter F. Rulemaking

### §97.500. Petitions to Initiate Rulemaking Proceedings.

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

- (1) a brief explanation of the proposed rule;
- (2) the full text of the proposed rule, and, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and
- (3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it.

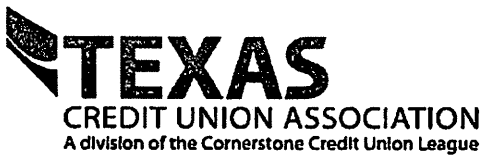
(b) When the Department receives a rulemaking petition, the Department shall review it for compliance with the requirements of subsection (a) of this section. If the petition is determined to comply, the Department shall notify the applicant that the petition has been accepted for filing and will be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

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

### §97.501. Hearing on Proposed Rules.

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

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



April 20, 2017

The Honorable Harold Feeney  
Commissioner  
Texas Credit Union Department  
914 East Anderson Lane  
Austin, TX 78752-1699

Dear Commissioner Feeney :

The Texas Credit Union Association has reviewed the proposed changes to Sec. 97.104 and the new subchapter F of 7 TAC, Chapter 97 regarding the process for petitions to initiate rulemaking proceedings.

We also reviewed the proposed changes to 7 TAC Section 95.105 clarifying that examinations will be conducted at least once within a 12 month period rather than within a calendar year, and the possible extension of the exam interval to 18 months.

These changes should prove beneficial, allowing credit unions in good standing to focus on the core mission of serving their members while providing the public greater ability to provide input to the Commission on regulatory matters.

Respectfully,

A handwritten signature in black ink, appearing to read "Jeff Huffman", followed by a long horizontal line extending to the right.

Jeff Huffman  
President  
Texas Credit Union Association



## **FREQUENCY OF EXAMINATION**

### **D. (c) Discussion, Consideration, and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC Section 97.105 Concerning frequency of examination.**

**BACKGROUND:** At its March meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 97.105. One comment was received supporting the adoption of the proposed amendments.

In general, the purpose of the adoption of the amendments is to implement changes resulting from the Commission's review of Chapter 97 under Texas Government Code Section 2001.039. The amendments clarify that the annual examination requirement means credit unions must be examined at least once during each twelve-month period. The proposed amendments also provide specific authority for the Department to extend the annual examination intervals to 18 months without prior written approval of the Commission.

**RECOMMENDED ACTION:** The Department recommends that the Commission adopt the amendments as previously published.

**RECOMMENDED MOTION:** I move that we adopt the amendments to Rule 97.105 without changes to the proposed text as published in the *Texas Register*.

## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 97. Commission Policies and Administrative Rules

##### Subchapter A General Provisions

The Credit Union Commission (the Commission) adopts amendments to Section 97.105 concerning frequency of examination, without changes to the proposal as published in the March 24, 2017 issue of the *Texas Register* (42 TexReg 1313). The amended rule will not be republished.

In general, the purpose of the adoption of the amendments is to implement changes resulting from the commission's review of Chapter 97 under Texas Government Code Section 2001.039. The amendments clarify that the annual examination requirement means credit unions must be examined at least once during each twelve-month period. The proposed amendments also provide specific authority for the Department to extend the annual examination intervals to 18 months without prior written approval of the Commission.

The department received one comment in support to the proposed amendments.

The amendments are adopted under Texas Finance Code, <\*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code <\*>126.051, concerning examinations.

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

**§97.105. Frequency of Examination.**

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

DRAFT



April 20, 2017

The Honorable Harold Feeney  
Commissioner  
Texas Credit Union Department  
914 East Anderson Lane  
Austin, TX 78752-1699

Dear Commissioner Feeney :

The Texas Credit Union Association has reviewed the proposed changes to Sec. 97.104 and the new subchapter F of 7 TAC, Chapter 97 regarding the process for petitions to initiate rulemaking proceedings.

We also reviewed the proposed changes to 7 TAC Section 95.105 clarifying that examinations will be conducted at least once within a 12 month period rather than within a calendar year, and the possible extension of the exam interval to 18 months.

These changes should prove beneficial, allowing credit unions in good standing to focus on the core mission of serving their members while providing the public greater ability to provide input to the Commission on regulatory matters.

Respectfully,

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Jeff Huffman  
President  
Texas Credit Union Association

**DEPARTMENT'S FY 2017 BUDGET AND  
FINANCIAL PERFORMANCE**

**C. (d) Discussion and Consideration of the Department's FY 2017 Budget and Financial Performance.**

**BACKGROUND:** In March 2016, the Commission adopted a Strategic Plan for Fiscal Years 2017-2021. The \$3.9 million FY 2017 Budget, approved by the Commission in July 2016, includes the maintenance and operation budget and capital improvement budget in support of the first year of the Strategic Plan.

The following report highlights the Department's financial performance for the nine-month period ending May 31, 2017.

The quarterly financial report is unaudited and is prepared on a cash basis of accounting. As required, most expenditures are expensed 30 day after the invoice due date.

**RECOMMENDED ACTION:** No action is anticipated.

Credit Union Department  
Operating Statement & Budget Analysis  
For the Period Ended 05/31/17

	FY 2017 Budget	FY 2017 YTD Budgeted Revenues	FY 2017 YTD Actual Revenues	Over (Under) Budget	Percent of Budget
<b>REVENUES:</b>					
Operating Income					
Operating Fees	\$3,935,394	\$3,685,209	\$3,682,937	(\$2,272)	100%
Out-of-State Branch Fees	\$10,500	\$10,500	\$10,500	\$0	100%
Examination Fees			\$3,775	\$3,775	
Application Fees			\$0	\$0	
Penalties		\$0	\$624	\$624	
Other			\$0	\$0	
<b>Operating Income Subtotal</b>		\$3,695,709	\$3,697,836	\$4,275	
Interest Income					
Interest Trust			\$6,278	\$6,278	
Interest USAS			\$0	\$0	
<b>Interest Income Subtotal</b>		\$0	\$6,278	\$6,278	
Refunds		\$0	\$0	\$0	
<b>TOTAL REVENUES</b>	<b>\$3,945,894</b>	<b>\$3,695,709</b>	<b>\$3,704,114</b>	<b>\$8,405</b>	
<b>Excess Reserve Funds</b>	<b>\$239,686</b>	<b>\$239,686</b>	<b>\$239,686</b>	<b>\$0</b>	
<i>utilized to reduce operating fees</i>					
<b>FY 16 Remaining Balance in USAS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>TOTAL FUNDS AVAILABLE TO COVER EXPENDITURES</b>	<b>\$4,185,580</b>	<b>\$3,935,395</b>	<b>\$3,943,800</b>		

Credit Union Department  
Operating Statement & Budget Analysis  
For the Period Ended 05/31/17

	FY 2017 Budget	FY 2017 YTD Budget	FY 2017 YTD Actual	(Over)Under Budget	Percent of Budget
<b>EXPENDITURES:</b>					
<b>Personnel Expenses:</b>					
Salaries and Wages	\$2,413,819	\$1,787,116	\$1,693,080	\$94,036	95%
Employee Benefits	\$762,997	\$570,744	\$531,763	\$38,982	93%
<b>Total Personnel Expenses</b>	<b>\$3,176,816</b>	<b>\$2,357,860</b>	<b>\$2,224,842</b>	<b>\$133,018</b>	<b>94%</b>
<b>Travel Expenses:</b>					
In State	\$407,921	\$305,940	\$304,856	\$1,085	100%
Out-of-State	\$10,000	\$8,325	\$3,096	\$5,229	37%
Commission	\$11,000	\$7,862	\$4,110	\$3,752	52%
<b>Total Travel Expenses</b>	<b>\$428,921</b>	<b>\$322,127</b>	<b>\$312,062</b>	<b>\$10,066</b>	<b>97%</b>
<b>Other Operating Expenses:</b>					
Communication/Utilities	\$38,320	\$25,547	\$25,619	(\$73)	100%
Professional Services/Fees	\$70,854	\$53,140	\$40,735	\$12,405	77%
Supplies/Materials	\$36,518	\$17,292	\$20,091	(\$2,800)	116%
Printing and Reproduction	\$2,855	\$2,142	\$725	\$1,417	34%
Repairs/Maintenance	\$79,290	\$59,472	\$19,733	\$39,739	33%
Rentals and Leases	\$5,520	\$4,577	\$5,570	(\$993)	122%
Other Operating	\$96,300	\$59,991	\$54,154	\$5,836	90%
<b>Total Other Operating Expenses</b>	<b>\$329,657</b>	<b>\$222,160</b>	<b>\$166,630</b>	<b>\$55,530</b>	<b>75%</b>
<b>TOTAL EXPENDITURES</b>	<b>\$3,935,394</b>	<b>\$2,902,148</b>	<b>\$2,703,534</b>	<b>\$198,614</b>	<b>93%</b>
TOTAL Budget Variance(over) under				\$207,019	
<b>REMAINING FUNDS TO COVER EXPENDITURES</b>			<b>\$1,240,266</b>		



## **FINANCIAL CONDITION**

### **D. (e) Discussion of the Financial Condition of the State Credit Union System.**

**BACKGROUND:** The operating environment for Texas credit unions continues to be sound because of a sound Texas economy. The economic outlook for most Texas cities in the upcoming years is positive, with the most notable growth expected to occur in the major metropolitan areas. As the energy sectors continues to rebound and energy prices increase, the cities within those regions areas are also expected to experience significant employment gains and accelerated economic growth.

In general, Texas credit unions continue to perform well and realize positive loan growth, strong asset quality trends, satisfactory earnings performance and stable net worth positions. However, recent trends reflect a reduction in credit union bottom lines attributed primarily to increased operating costs and provision for loan and lease losses expenses. Boards and operating management must focus their efforts on effective and efficient operations, as well as sound loan underwriting. The costs associated with advancing technology, and achieving and maintaining regulatory compliance continues to create challenges for credit unions. To absorb these costs, improving operational efficiency remains critical, as well as the need to identify new non-interest income sources to generate revenue.

**INDUSTRY STATUS:** At **March 31, 2017**, there were **186** state-chartered credit unions in Texas. Assets in these credit unions totaled **\$39.14 billion**, which is an increase of **\$3.37 billion** since **March 31, 2017**, for an annualized growth rate of **9.4%**. The average net worth ratio is **10.03%**, up from **9.99%** at **March 31, 2016**.

Loans for Texas chartered credit unions totaled **\$27.92 billion** as of **March 31, 2017**. This is an increase of **\$3.3 billion** since **March 31, 2016** for an annualized growth rate of **13.4%**.

Shares for Texas chartered credit unions totaled **\$33.98 billion** as of **March 31, 2017**. This is an increase of **\$2.88 billion**, or **9.3%** since **March 31, 2016**.

Texas chartered credit unions average loan delinquency ratio was **0.60%** as of **March 31, 2017**, compared to a ratio of **0.63%** as of **March 31, 2016**.



At **March 31, 2017**, **59** state-chartered credit union reported year to date net operating losses of **\$5.98 million**; while the remaining **127** credit unions reported aggregate net income of **\$46.97 million**.

**PROBLEM INSTITUTIONS:** As of **May 31, 2017**, there were **22** credit unions assigned a CAMEL rating of 3 or higher, compared to **27** credit unions at **May 31, 2016**. Credit unions in this category are monitored through a combination of off-site monitoring, regular on-site contacts, and ongoing reviews for compliance with outstanding Documents of Resolution and other supervisory agreements or orders.

**ENFORCEMENT ISSUES:** As of **May 31, 2017**, the Department had the following administrative sanctions outstanding:

Dividend Restrictions	<b>0</b>
LUAs	<b>0</b>
Determination Letters	<b>1</b>
Conservatorships	<b>0</b>
Cease and Desist	<b>3</b>

**Chartering Activity**

New Charter	<b>0</b>
-------------	----------

**RECOMMENDED ACTION:** No formal action is anticipated.

# RATIO ANALYSIS

**March 2017 vs. March 2016**

	March 31, 2017	March 31, 2016	Difference
# of Credit Unions	186	184	+2
Total Assets	\$39.14B	\$35.77B	+3.37B
Average Assets/CU	8.6M	6.3M	+2.3K
Net Worth/Total Assets	10.03	9.99	+0.04
Net Worth Growth	16.23	5.32	+10.9M
Return on Average Assets	0.43	0.61	-0.18
Net Interest Margin/ Average Assets	4.85	4.76	+0.09
Fee & Other Income/Average Assets	1.64	1.63	+1
Operating Expense/Average Assets	3.77	3.68	+0.09
Provision for Loan Loss/Average Assets	0.66	0.53	+0.13
% of (Negative) Credit Union Earnings	31.7	20.7	+11
Total Loans/Total Shares	82.15	79.16	+2.99
Delinquent Loans/Total Loans	0.60	0.63	-0.03
Net Charge-Offs/Average Loans	0.75	0.65	+0.1
Share Growth	27.12	10.72	+16.40
Loan Growth	21.07	4.81	+16.26
Asset Growth	25.68	10.58	+15.10
Membership Growth	12.79	3.70	+9.09

## **LEGISLATIVE ISSUES**

### **D. (f) Discussion and Consideration of Legislative Issues and Activities Relating to the 85<sup>th</sup> Regular Session that may Impact the Department or Credit Unions under the Department's Jurisdiction.**

**BACKGROUND:** Over the 140-day regular session of the 85<sup>th</sup> Texas Legislature, lawmakers debated a wide range of issues. More than 6,600 bills were filed. Governor Abbott has signed more than 1,000 bills into law, and he has vetoed 51 bills. More than 150 bills have advanced without the governor's signature. Staff will briefly highlight several bills which are of note to credit unions and/or the Department.

**RECOMMENDED ACTION:** No formal action is anticipated.

## Texas Legislature – 85<sup>th</sup> Regular Session

### Senate Bill 79

*Effective: September 1, 2017*

Currently, political subdivisions like cities and counties may direct requestors of public information to a website if the information already exists online. However, state agencies must provide original copies for inspection, make duplication, and/or send the information by first class mail.

The bill streamlines access to public information by allowing state agencies to respond to information requests with an Internet address where requested information may already exist.

### Senate Bill 80

*Effective: September 1, 2017*

The bill would repeal or modify certain required reports prepared by state agencies. The changes would include removing the Sunset Advisory Commission as a recipient of state agency five-year strategic plans and annual agency internal audit reports. The annual report from the Residential Mortgage Fraud Task Force was eliminated.

### Senate Bill 261

*Effective: September 1, 2017*

The bill amends the Government Code to exempt a Department of Information Resources (DIR) contract for the bulk purchase of information technology commodity items intended for use by more than one state agency from certain procedural requirements for purchasing a commodity item from the DIR list of commodity items available for purchase through DIR at a lower price than those otherwise available to state agencies for such items.

### House Bill 471

*Effective: Voter Approval*

The bill legislative permission for credit unions and other financial institutions to offer prize-linked savings program if the associated proposed constitutional amendment is approved by Texas voters. The bill also amends current law relating to permitting financial institutions to award prizes by lot to promote savings.

The bill requires Credit Union Commission to adopt rules and procedures for the administration of this section.

### HJR 37

*Effective: Voter Approval*

The joint resolution seeks to incentivize savings among Texans by proposing a constitutional amendment to authorize financial institutions to offer prize-linked savings programs with legislative permission. The proposed constitutional amendment will be submitted to votes at an election to be held November 7, 2017.

### Senate Bill 526

*Effective: September 1, 2017*

The bill abolishes certain state government advisory entities, including the residential mortgage fraud task force. The credit union commissioner was a member of the task force.



<b>Senate Bill 532</b>	<i>Effective: September 1, 2017</i>
<p>The bill amends the Government Code to require the Department of Information Resources (DIR) to submit a biennial consolidated report of each state agency's information technology (IT) infrastructure . The consolidated report will include an analysis and assessment of each state agency's security and operational risks. For a state agency found to be at higher security and operational risks, the report will also include a detailed analysis of, and costs estimates to implement, the requirements for the agency to address the risks and related vulnerabilities and the agency's efforts to address the risks through modernization of IT systems.</p> <p>The bill requires a state agency to consider cloud computing services when making purchase for major information resources projects.</p> <p>The bill would also requires a state agency to provide the information requested by DIR for the creation of requested DIR Reports.</p>	
<b>Senate Bill 533</b>	<i>Effective: September 1, 2017</i>
<p>The bill amends current law relating to state agency contracting and procurement. Among other things, it adds a new disclosure requirement for state agency officials and employees who are involved in procurement or contract management for a state agency for purchase of goods or services to disclose any potential conflict of interest if the contract for the purchase of goods or services exceeds \$25,000.</p> <p>The bill requires state agencies to comply with any request for information from the new chief procurement officer at the Comptroller's office.</p> <p>The bill also requires state agencies to adopt a vendor and employee interaction and communication policy by January 1, 2018.</p>	
<b>Senate Bill 564</b>	<i>Effective: September 1, 2017</i>
<p>The bill amends the Government Code to allow discussion of security assessments relating to information technology to be made in closed meeting of a governmental body.</p>	
<b>House Bill 1290</b>	<i>Effective: September 1, 2017</i>
<p>The bill amends the Government Code to prohibit a state agency from adopting a rule that imposes a cost on regulated persons, unless the agency repeals another rule that imposes a total cost that is equal to or greater than the total cost of the proposed rule, or amends a rule to decrease the total cost in an amount that is equal to or greater than the proposed rules. SDSI agencies are exempt from this provision.</p> <p>The bill also requires proposed rules to include detailed statement about impact on government growth. All agencies are subject to these requirements.</p>	

<b>Senate Bill 1349</b>	<i>Effective: September 1, 2017</i>
<p>The bill authorizes Texas Department of Transportation to sell any part of certain tracts of land at the Camp Hubbard complex, which is not need by Texas Department of Motor Vehicles for its permanent headquarters, to one or more financial regulatory agencies, as defined by Section 16.001 of the Finance Code.</p>	
<b>House Bill 3107</b>	<i>Effective: September 1, 2017</i>
<p>The bill amends the Government Code to provide that open records request in which the requestor fails, within prescribed time periods, to inspect or duplicate the requested information, or for which the requestor fails to pay applicable charges, are withdrawn.</p> <p>The bill also provides that multiple open records requests from the same individual on the same day can be considered as a single request for the purpose of cost calculations.</p>	
<b>House Bill 3433</b>	<i>Effective" September 1, 2017</i>
<p>The bill would amends the Government Code to require a state agency that is considering adopting a rule to prepare an economic impact statement if the proposed rule would adversely affect a rural community (defined as a municipality with a population of 25,000 or less). This requirement is added to and mirrors current requirements for statement about impact on small businesses.</p>	
<b>House Bill 3921</b>	<i>Effective: September 1, 2017</i>
<p>The bill seeks to protect the financial well-being of certain vulnerable adults by authorizing financial institutions to place a hold on suspicious transactions involving these vulnerable adults and by requiring the reporting of suspected financial exploitation. The bill also provides immunity for a financial institution that in good faith and the exercise of reasonable care either takes action or does not take action as prescribed in this bill.</p>	
<b>SJR 60</b>	<i>Effective: Voter Approval</i>
<p>The joint resolution would amend the Texas Constitution to revise the cap on fees that can be charged when making a home equity loan, allow the refinancing of home equity loans into non-home equity loans, repeal a prohibition on home equity loans for agricultural homesteads, revise a provision governing home equity lines of credit, and amend the list of approved lenders.</p> <p>The proposed constitutional amendment will be submitted to voters at an election on November 7, 2017. If approved by voters, the amendment would take effect January 1, 2018.</p> <p>If approved by voters, the proposition would necessitate that the Credit Union Commission to jointly adopt/amend/repeal certain interpretations with the Finance Commission.</p>	

E

## **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 the 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.

## **NEW MATTERS**

Thirteen (13) new items are being presented to the Commission for its consideration and possible action. Specifically, the Commission will have:

- a. Discussion, Consideration, and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 6, Chapter 91, Subchapters A (General Rules), B (Organization Procedures), J (Changes in Corporate Status), and L (Submission of Comments by Interested Parties)
- b. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations
- c. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.115 Concerning Safety at Unmanned Teller Machines
- d. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.121 Concerning Complaint Notification
- e. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.205 Concerning Use of Credit Union Name
- f. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests
- g. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC Section 91.1003 Concerning Mergers/Consolidations
- h. Discussion, Consideration and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC Section 91.1010 Concerning Voluntary Liquidations
- i. Discussion, Consideration, and Possible Vote to Take Action to Approve Both the Department's Operating Plan and Budget for Fiscal Year 2018
- j. Discussion, Consideration and Possible Vote to Take Action on the Staff Proposal to Manage and Control Access to the Credit Union Department Building During Normal Business Hours

- k. Discussion, Consideration, and Possible Vote to Take Action to Authorize the Commissioner to Negotiate and Participate in an Alternate Joint Supervision Pilot Project with the National Credit Union Administration
- l. Discussion, Consideration, and Possible Vote to Take Action to Approve Resolutions of Appreciation for Outgoing Commission Members Manuel Cavazos and Gary Tuma
- m. Discussion and Consideration of the Chair's Designation of a Vice Chair and Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation)

## **MANDATORY RULE REVIEW**

**E. (a) Discussion, Consideration, and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 6, Chapter 91 Subchapters A (General Rules), B (Organization Procedures), J (Changes in Corporate Status), and L (Submission of Comments by Interested Parties).**

**BACKGROUND:** Section 2001.39, 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 July 8, 2016 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 reviewed 7 TAC Sections 91.101, 91.103, 91.104, 91.105, 91.110, 91.115, 91.120, 91.121, 91.125, 91.201, 91.202, 91.203, 91.205, 91.206, 91.208, 91.209, 91.210, 91.1003, 91.1005, 91.1006, 91.1007, 91.1008, 91.3001, and 91.3002 and believes that certain revisions are appropriate and necessary. Amendments to the noted subchapters are being separately presented for proposal.

Notice of review and a request for comments on these rules were published in the April 21, 2017 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rules continue to exist.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

**RECOMMENDED ACTION:** I move that the Commission find that the reasons for adopting Chapter 91, Subchapters A, B, J, and L continue to exist and that the Commission re-propose and readopt the rules in these subchapters.

## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

##### Subchapter A General Rules

##### Subchapter B Organization Procedures

##### Subchapter J Changes in Corporate Status

##### Subchapter L Submission of Comments by Interested Parties

The Credit Union Commission (Commission) has completed its review of Chapter 91 Subchapter A (relating to General Rules), Subchapter B (relating to Organization Procedures), Subchapter J (relating to Changes in Corporate Status), and Subchapter L (relating to Submission of Comments by Interested Parties) of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.101 – 91.125, 91.200 – 91.210, 91.1003 – 91.1008, and 91.3001 – 91.3002. The Commission proposes to readopt these rules.

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

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapters A, B, J, and L was published in the *Texas Register* as required on April 21, 2017 (42 TexReg 2269). The Department received no comments on the notice of intention to review.

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

As a result of the internal review by the Department, the Commission has determined that certain revisions are appropriate and necessary. The Commission is concurrently proposing amendments to Chapter 91, Subchapters A, B, and J as published elsewhere in this issue of the *Texas Register*. Subject to the concurrently proposed amendments to Chapter 91, Subchapters A, B, J, and L, the Commission find that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapters A, B, J, and L in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapters A, B, J, and L.

# CHAPTER 91

## Subchapter A. General Rules

### §91.101. Definitions and Interpretations.

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

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

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

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

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

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

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

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

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

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

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

(ii) employment or attendance at a school; or

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

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

(i) whether the members pay dues,

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

(iii) whether the members have voting rights,

(iv) whether there is a membership list,

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

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

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

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

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

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

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

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

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

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

(15) Improved residential property--real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property.



This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

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

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

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

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

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

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

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

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

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

- (A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or
- (B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.
- (24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.
- (25) Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.
- (26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.
- (27) Principal office--the home office of a credit union.
- (28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.
- (29) Real estate or real property—an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.
- (30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.
- (31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.
- (32) Resident of this state--a person physically located in, living in or employed in the state of Texas.
- (33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.
- (34) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.
- (35) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.
- (36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.
- (37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code [(TAC)], Banking and Securities, which contains all of the department's rules.
- (38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:
- (A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

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

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

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

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

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

### **§91.103. Public Notice of Department Decisions.**

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

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

### **§91.104. Public Notice and Comment on Certain Applications.**

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

- (1) an application for incorporation under Texas Finance Code §122.001;
- (2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;
- (3) a request for an amendment to a credit union's bylaws for an expansion of its field of membership under Texas Finance Code §122.011;

- (4) an application for merger or consolidation under Texas Finance Code §122.152;
- (5) an application for conversion of a credit union's certificate of incorporation under Section 91.1007 of this chapter (relating to conversion to a mutual savings institution); and
- (6) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013.

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

#### **§91.105. Acceptance of Other Application Forms.**

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

#### **§91.110. Protest Procedures for Applications.**

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

#### **§91.115. Safety at Unmanned Teller Machines.**

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

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

(c) Safety evaluations.

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

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

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

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

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

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

- (A) security at walk-up or drive-up unmanned teller machines;
- (B) protection of code or personal identification numbers;
- (C) procedures for lost or stolen access devices;
- (D) reaction to suspicious circumstances;
- (E) safekeeping and disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;
- (F) the inadvisability of surrendering information about the member's access device over the telephone;
- (G) safeguarding and protecting the member's access device, such as a recommendation that the member treat the access device as if it was cash;
- (H) protection against unmanned teller machine fraud, such as a recommendation that the member compare unmanned teller machine receipts against the member's monthly statement; and
- (I) other recommendations that the credit union reasonably believes are appropriate to facilitate the security of its unmanned teller machine users.

(e) Leased premises.

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

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

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

#### **§91.120. Posting of Notice Regarding Certain Loan Agreements.**

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

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

### §91.121. Complaint Notification.

(a) Definitions.

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

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

(b) Required Notice.

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

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

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address

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

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

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

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

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

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

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

### §91.125. Accuracy of Advertising.

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

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

(1) contains materially false claims or misrepresentations of material facts;

(2) contains materially implied false claims or implied misrepresentations of material fact;



- (3) omits material facts;
  - (4) makes a representation likely to create an unjustified expectation about credit union products or services;
  - (5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;
  - (6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and
  - (7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).
- (c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.
- (d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

## **Subchapter B. Organization Procedures**

### **§91.201. Incorporation Procedures.**

- (a) An application to incorporate a credit union shall be in writing and supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of incorporation.
- (b) Business Plan. The application must include a business plan that covers three years and provides detailed explanations of actions that are proposed to accomplish the primary functions of the credit union. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will maintain adequate capital to support its operations. Specifically the plan must:
- (1) Describe the credit union's business, including the products, member services, and other activities;
  - (2) Provide quarterly pro forma financial information for the three years of operation, including annual totals for the Income Statement;
  - (3) Describe in detail all of the assumptions used to prepare the projected financial information;
  - (4) Discuss the capital goals and the means to achieve them;
  - (5) Discuss the overall marketing/advertising strategy to reach potential members;
  - (6) Discuss the credit union's strategy for obtaining required share and deposit insurance protection for its members' accounts; and
  - (7) Describe the economic forecast for the three years of the plan.
- (c) The commissioner shall determine whether or not an application is complete within thirty days of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.

(d) Upon the determination that an application is complete, the commissioner shall make or cause to be made an investigation and examination of the facts concerning the applicant. It is essential that the investigation and examination confirm to the satisfaction of the commissioner that the proposed institution will have a reasonable opportunity to succeed.

(e) Proposed credit unions must investigate the possibility of an overlap with existing state or federal credit unions doing business in this state prior to submitting an application. When an overlap situation does arise, officials of the involved entities must attempt to resolve the overlap issue. Typically, an overlap will not be considered adverse to the overlapped credit union if:

(1) the group has fewer than 3000 primary potential members or the overlap is otherwise incidental in nature;

(2) the overlapped credit union does not object to the overlap;

(3) there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time; or

(4) a single occupational or associational based credit union overlaps a community chartered credit union.

(f) When the applicant and a credit union agree and/or the commissioner has determined that overlap protection is appropriate, an exclusionary clause will be included in the proposed field of membership for a period of 24 months from the date the proposed credit union commences business. The commissioner, for good cause shown, may extend this period for an additional 24 months.

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

#### **§91.202. Bylaw and Articles of Incorporation Amendments.**

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

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

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

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

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

(f) A credit union's board of directors may amend its bylaws to adopt any standard bylaw without approval by the commissioner provided: (1) the wording of the amendment is identical to the Standard Bylaws; and (2) the credit union submits a completed, fully executed



Certification of Resolution of Amendment to Credit Union Bylaws ("Certification") to the commissioner. The commissioner will promptly acknowledge receipt of the Certification. The amendment will be effective as of the date the commissioner acknowledges receipt of the Certification.

#### **§91.203. Share and Deposit Insurance Requirements.**

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

#### **§91.205. Credit Union Name.**

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

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

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

- (1) Prior to offering secondary capital accounts, the credit union shall file an application for approval with the commissioner. The application shall be supported by a written plan for use of the funds

in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts, along with such other information and data as the commissioner may require.

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

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

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

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

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

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

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

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

(10) In the event the credit union is classified as "critically under capitalized", "marginally capitalized", "minimally capitalized", "moderately capitalized" or "uncapitalized", or the credit union has failed to undertake any mandatory supervisory action, the commissioner or any entity insuring the accounts of the credit union, may prohibit payment of principal, dividends or interest on the credit union's secondary capital accounts in accordance with powers and procedures granted under state or federal laws, as applicable. Any such unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

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

#### **§91.208. Notice of Known or Suspected Criminal Violations.**

(a) Each credit union shall exercise reasonable due diligence to discover, investigate, and report theft, embezzlement, and other types of criminal activity affecting the credit union. The

credit union shall provide written notice to the Department within 30 calendar days for any of the following known or suspected criminal violations:

- (1) Insider abuse involving any amount,
  - (2) Other transactions, including potential money laundering or violations of the Bank Secrecy Act, aggregating \$5,000 or more,
  - (3) Losses resulting from robbery or burglary.
- (b) When applicable, a credit union may meet the reporting requirements of this section by providing the Department a copy of a Suspicious Activity Report prepared in accordance with the NCUA Rules and Regulations 12 C.F.R. §748.1(c). The timeframe for reporting the activity to the Department in this manner may be extended up to 60 days when authorized by the regulation.

#### **§91.209. Call Reports and Other Information Requests.**

- (a) Each credit union shall file a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.
- (b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.
- (c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty \$50 for each day or fraction of a day such report or document is in arrears.
- (d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.
- (e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.
- (f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to negate the credit union being assessed a civil money penalty under Section 202 of the Federal Credit Union Act (12 U.S.C. § 1782) for late or false/misleading filing of a quarterly call report (Form 5300). This penalty shall be abated in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, however, shall not be decreased below the amount authorized to be levied under subsection (a).

### **§91.210. Foreign Credit Unions.**

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

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

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

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

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

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

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

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

(6) has paid a permit fee of \$500 for each and every branch office proposed to be established in the State of Texas;

(7) has fidelity bond coverage satisfactory to the commissioner; and

(8) has provided all other information the commissioner may require.

(d) Compliance with Texas law. A credit union chartered by another state shall comply with all applicable Texas laws, including those laws regarding home equity lending, loan interest rates, and consumer protection, to the same extent that those laws apply to a Texas credit union.

(e) Federal treaties. If a treaty or agreement exists between the United States and a foreign country which requires the commissioner to permit a foreign credit union to operate a branch in this state and the commissioner determines that the applicant has substantially the same characteristics as a credit union organized under the Act, then the applicant must comply with all provisions of the Act and commission rules, unless otherwise permitted by this section.

(f) Financial statements. Each foreign credit union that is operating a branch office within the State of Texas shall furnish to the commissioner a copy of its annual audited financial statements, if any, or other statements of financial conditions as the commissioner may require.

(g) Examinations. The commissioner is authorized to examine the books and records of any branch office operated in the State of Texas by a foreign credit union. The costs of examination, as prescribed in §97.113(d) of this title (relating to Supplemental Examinations), must be fully borne by the foreign credit union. The supplemental examination fee may be waived or reduced at the discretion of the commissioner.

(h) Agreements with other regulators. The commissioner shall enter into supervisory agreements with the foreign credit union regulators and, as necessary, the foreign credit unions, as authorized by Finance Code §15.411, to resolve any conflict of laws and to specify the manner in which the examination, supervision, and application processes will be coordinated with the regulators. The agreement may also prescribe the applicable laws governing the powers and authorities of the foreign branch and may address, but are not limited to, corporate governance and operational matters. The agreement, however, shall not limit the jurisdiction or authority of the commissioner to examine, supervise and regulate a foreign credit union that is operating or

seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.

(i) **Field of membership.** A certificate of authority to do business in this state is specifically issued to allow a foreign credit union to provide services to its existing field of membership. However, the commissioner may approve a foreign credit union's request to expand its field of membership to include groups with a community of interest that are within the foreign credit union's local service area if it is organized in a state or country that allows a credit union organized under the act to expand its field of membership to at least the same extent. After being satisfied that the group is within the foreign credit union local service area, the commissioner shall use the same criteria and the same procedures as used when a Texas credit union seeks to expand its field of membership. The commissioner shall make a reasonable effort to coordinate this determination with the foreign credit union's primary regulator to assure that each agency's material interests, authorities and responsibilities are fulfilled.

(j) **Location of Group.** For the purposes of a field of membership expansion, the group as a whole will be considered to be within the local service area when:

(1) A majority of the persons in the group live, work, or gather regularly within the local service area;

(2) The group's headquarters is located within the local service area; or

(3) The group's "paid from" or "supervised from" location is within the local service area.

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

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

## **Subchapter J. Changes in Corporate Status**

### **§91.1003. Mergers/Consolidations.**

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

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

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

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

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements

of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

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

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

- (1) the current financial reports of each credit union;
- (2) the combined financial reports of the two or more credit unions;
- (3) an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;
- (4) an explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;
- (5) a summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;
- (6) a summary of the advantages and disadvantages of the merger/consolidation;
- (7) the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and
- (8) any other items deemed critical to the merger/consolidation agreement by the boards of directors.

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

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

- (A) the merger/consolidation plan, as described in this rule;
- (B) a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;
- (C) the proposed Notice of Special Meeting of the members;
- (D) a copy of the ballot form to be sent to the members;
- (E) the current delinquent loan summaries for each credit union;
- (F) if the acquiree credit union has \$65.2 million or more in assets on its latest call report, a statement as to whether the transaction is subject to the Hart-Scott Rodino Act premerger notification filing requirements; and

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

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

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

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall

not be granted unless such conditions have been met within the time specified in the preliminary approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Completion of Merger/Consolidation.

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

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

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

#### **§91.1005. Conversion to a Texas Credit Union.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

#### **§91.1007. Conversion to a Mutual Savings Institution.**

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

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

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

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

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

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

(4) Adoption of a conversion proposal by the board. Subsequent to the written comment period, the credit union may adopt, by the affirmative vote of at least two-thirds of the members of its board of directors, a conversion proposal consistent with this section. The credit

union shall notify the department of the board's approval of the proposal within 5 days of the approval. In addition, the following documents must be sent to the department as soon as reasonably practical:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Subchapter L. Submission of Comments by Interested Parties**

#### **§91.3001. Opportunity To Submit Comments On Certain Applications.**

(a) An interested party may submit comments to the commissioner on the following matters:

(1) an application for incorporation under the Texas Finance Code, Section 122.001;

(2) an amendment to a credit union’s articles of incorporation under the Texas Finance Code, Section 122.011, which includes an amendment to expand the credit union’s field of membership; or

(3) an application to merge or consolidate under the Texas Finance Code, Section 122.152.

(b) An interested party is a person or entity that has an interest in particular to the application other than as a member of the general public.

- (c) Acceptance of comments under this section does not constitute a determination of standing to protest or otherwise participate in a contested case hearing on the application.
- (d) Comments may be made in writing or provided in a meeting with the commissioner or deputy commissioner, as follows:
  - (1) written comments shall be submitted within 30 days after notice of the application is published in the Texas Register or the department's newsletter, whichever is later;
  - (2) a meeting to receive comments shall be held upon written request by an interested party or upon the commissioner's direction.

#### **§91.3002. Conduct Of Meetings To Receive Comments.**

- (a) Meetings to receive comments under 91.3001 of this title (relating to opportunities to submit comments on certain applications) will be conducted in the following manner:
  - (1) a written request for a meeting to receive comments must be received by the department within 30 days after publication of the notice of the application and shall contain the following:
    - (A) the identity of the requestor, including the name of a natural person who represents a business entity or other association, mailing address, daytime telephone number, and a facsimile number if any;
    - (B) the name of the application and type of application;
    - (C) a description of the requestor's interest in the application; and
    - (D) a list of at least three dates and times within 30 days after the date of publication of notice of application, which are available for the meeting.
  - (2) the meeting will be scheduled and may be rescheduled, if necessary, by the commissioner to occur after at least three business days' notice by telephone, facsimile, or mail;
  - (3) one meeting may be scheduled to receive comments from more than one interested party, at the discretion of the commissioner;
  - (4) a limit on the length and other conditions for the conduct of the meeting may be imposed by the commissioner, and the conditions will be stated in the notice of the meeting;
  - (5) the meeting may be conducted by telephone with the consent of the interested party; and
  - (6) the department is not required to make a record of the meeting.
- (b) An interested party who fails to attend a meeting scheduled for the party's benefit may submit written comments within three days after the date scheduled for the meeting, but the commissioner is not required to schedule another meeting.
- (c) The purpose of the meeting is only to receive comments, and no decision, preliminary or otherwise, will be made at the meeting.

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

## **DEFINITIONS AND INTERPRETATIONS**

### **E (b) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations.**

**BACKGROUND:** The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter A under Texas Government Code Section 2001.039. The proposed amendments to this rule would add one new definition, modify four definitions, and delete two definitions. Overall, the proposed changes provide clarification, better readability and technical corrections.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.101.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.101.

TITLE 7. BANKING AND SECURITIES  
Part 6. Credit Union Department  
Chapter 91. Chartering, Operations, Mergers, Liquidations  
Subchapter A. General Rules

The Credit Union Commission (the Commission) proposes amendments to Section 91.101 concerning definitions and interpretations. The proposed amendments to Section 91.101 add one new definition, modify four definitions, and delete two definitions. Interactive teller machine is now defined in this section, while the definitions of catastrophic act and construction or development loan have been deleted as no longer necessary. The definitions of “improved residential property”, “loan-to-value ratio”, and “loan and extension of credit” have been expanded to enhance consistency with federal regulations. Finally, the definition of “office” was modified to include interactive teller machines.

In general, the purpose of the amendments to Section 91.101 is to implement changes resulting from the commission’s review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the Texas Register on April 21, 2017 (42 TexReg 2269), and the rules are proposed as a result of the Department’s general rule review. The department did not receive any comments on the notice of intention to review.

Overall the proposed changes provide clarification, better readability and technical corrections.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, 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*.

The amendments are proposed under Texas Finance Code, <\*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3.



## 91.101. Definitions and Interpretations.

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

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

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

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

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

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

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

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

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

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

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

(ii) employment or attendance at a school; or

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

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

(i) whether the members pay dues,

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

(iii) whether the members have voting rights,

(iv) whether there is a membership list,

(v) whether the association sponsors activities,



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

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

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

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

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

~~(8) (10)~~ Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

~~(9) (11)~~ Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

~~(10) (12)~~ Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

~~(11) (13)~~ Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

~~(12) (14)~~ Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular



and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

**(13) (15)** Improved residential property--**residential** real **estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily consisting of a residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use, dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.**

**(14)** Interactive teller machine (ITM)—**a video-based interactive technology which allows members to conduct transactions and credit union services driven by a centrally based teller, in a real time video or audio interaction .**

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

**(16) (17)** Loan-to-value ratio--the aggregate amount of all sums borrowed **and secured by the collateral**, including outstanding balances plus any unfunded commitment or line of credit from **another lender that is senior to the credit union's lien all sources on an item of collateral** divided by the **current market** value of the collateral.

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

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

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

- (A) Buyer and seller are typically motivated;
- (B) Both parties are well informed or well advised, and acting in their own best interests;
- (C) A reasonable time is allowed for exposure in the open market;
- (D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and



(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SAFETY AT UNMANNED TELLER MACHINES**

**E (c) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.115 Concerning Safety at Unmanned Teller Machines.**

**BACKGROUND:** The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter A under the Texas Government Code Section 2001.039. The proposed amendments to this rule would require a credit union to provide notice of basic unmanned teller machine safety precaution whenever an access device is issued or renewed. In addition, the amendments would permit the notice to be delivered electronic if the member has agreed. And finally, the amendments clarify that only one notice is required in the event the credit union furnishes an access device to more than one person on the same account.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.115.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.115.



## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

##### Subchapter A. General Rules

The Credit Union Commission (the Commission) proposes amendments to Section 91.115 concerning user safety at unmanned teller machines (UTM). The proposed amendments to Section 91.115 will reduce regulatory burden by authorizing delivery of notice by electronic means in certain circumstances. In addition, the proposed amendments would provide clarification, better readability, and technical corrections.

In general, the purpose of the amendments to Section 91.115 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the Texas Register on April 21, 2017 (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

Subsection (d) currently requires a credit union to furnish its members with a printed notice of basic safety precautions that a member should employ while using an unmanned teller machine. This requirement has not been altered since 1996, despite significant public experience gained in over twenty years of usage and the proliferation of electronic communications between consenting parties.

As proposed to be amended, Section 91.115(d) will require a credit union to provide notice of basic UTM safety precautions to its members whenever an access device is issued or renewed. Further, the amendment will permit the notice to be delivered to a member electronically if the member has agreed to conduct transactions by electronic means and will further clarify that in the event the credit union furnishes an access device to more than one member on the same account.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, 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*.

The amendments are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 59.310, which provides that the commission shall adopt rules to implement Subchapter D of Finance Code, Chapter 59.

<p>The statutory provisions affected by the proposed amendments are contained in Texas Finance Title 3, Subtitle A, Chapter 59, Subchapter D.

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### **§91.115. Safety at Unmanned Teller Machines.**

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code **§59.301, §59.307** have the same meanings as defined in the Finance Code.

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

(c) Safety evaluations.

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

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

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

(d) Notice. A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller machine. **The notice must be personally delivered or sent to each member whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.**

(1) **When notice is required. Access devices. The credit union issuer must furnish the notice to its member whenever an access device is issued or renewed. If the credit union furnishes an access device to more than one member on the same account, the credit union is not required to furnish the notice to more than one of the members. The notice shall be delivered personally or mailed to each member, whose mailing address is in this state, when an access device is issued, renewed or replaced.**

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

- (A) security at walk-up or drive-up unmanned teller machines;
- (B) protection of **the member's** code or personal identification numbers;
- (C) procedures for **reporting a** lost or stolen access device;
- (D) reaction to suspicious circumstances;
- (E) safekeeping and **secure** disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;
- (F) the inadvisability of surrendering information about the member's access device over the telephone **or the Internet, unless to a trusted merchant in a call or transaction initiated by the member;**



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

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

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

(e) Leased premises.

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

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

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



## **COMPLAINT NOTIFICATION**

**E (d) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.121 Concerning Complaint Notification.**

**BACKGROUND:** The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter A under Texas Government Code Section 2001.039. The proposed amendments to this rule would allow the required notice to be in a form that is substantially similar to the notice required by this rule. In addition, the proposed changes would alter the content of the required notice to include the department's facsimile number and an email address as well as provide clarification and better readability.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.121.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.121.

## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

##### Subchapter A. General Rules

The Credit Union Commission (the Commission) proposes amendments to Section 91.121 concerning the form of consumer complaint notification. The proposed amendment will allow the required notice to be in a form that is substantially similar to the current required notice. In addition, the proposed changes will alter the content of the required notice to include the department's facsimile number and an email address as well as provide clarification and better readability.

In general, the purpose of the amendments to Section 91.121 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the Texas Register on April 21, 2017 (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

Currently, Section 91.121(b) provides a form consumer complaint notice that must be duplicated exactly when the notice is required to be communicated to credit union members. Proposed amended Section 91.121(b) would state that this consumer complaint must only substantially conform to the form complaint notice that is currently provided by Section 91.121(b). This will allow a credit union to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, 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*.

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

Subchapter D of the Texas Finance Code, and, and under Texas Finance Code Section 15.409 which requires the Commission to adopt rules for directing complaints to the Department.

The specific section affected by the proposed amendments is Texas Finance Code, Section 15.409.

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## §91.121. Complaint Notification.

(a) **Definition Definitions.** For purposes of this section “required notice” means a notice in the form set forth or provided for in subsection (b)(1) of this section.

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

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

(b) Required Notice.

(1) Credit unions must provide their members with **the following a notice describing the process for filing complaints: 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: at** 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](http://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 office** 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, **it must include** the **required** notice or a link to the **required** notice **must be in a reasonably conspicuously conspicuous posted place** 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 **have an Internet website or does not** distribute a newsletter, the notice must be included with any privacy notice the credit union is required to give or send its members.

## **USE OF CREDIT UNION NAME**

### **E (e) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.205 Concerning Use of Credit Union Name.**

**BACKGROUND:** The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter B under the Texas Government Code Section 2001.039. The proposed amendments to this rule would further expound on the point that credit unions are solely responsible for any unauthorized use or infringement on a business trade name. In addition, the proposed changes will emphasize the need for a credit union to use appropriate due diligence in selecting a credit union name.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.205.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.205.



TITLE 7. BANKING AND SECURITIES  
Part 6. Credit Union Department  
Chapter 91. Chartering, Operations, Mergers, Liquidations  
Subchapter B. Organization Procedures

The Credit Union Commission (the Commission) proposes amendments to Section 91.205 concerning the name of a credit union. The proposed amendment further expounds on the point that credit unions are solely responsible for any unauthorized use or infringement on a business trade name. In addition, the proposed changes will emphasize the need for a credit union to use appropriate due diligence in selecting a credit union name.

In general, the purpose of the amendments to Section 91.205 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the Texas Register on April 21, 2017 (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

Choosing a credit union name is more than the relatively narrow exercise of deciding what "fits" and creating an identity for itself. Instead, credit unions need to include a broad search on where their proposed name fits with other business trade names to reduce the risk that a proposed name will infringe upon or cause confusion with an existing trade name.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule and less chance of public confusion regarding the name under which a credit union operates. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to [CUDMail@cusd.texas.gov](mailto:CUDMail@cusd.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*.

The amendments are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 122.003 which sets out requirements for a credit union name.

The specific section affected by the proposed amendments is Texas Finance Code, Section 122.003.

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### §91.205. Credit Union Name.

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



## **CALL REPORTS AND OTHER INFORMATION REQUESTS**

**E (f) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests.**

**BACKGROUND:** The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter B under Texas Government Code Section 2001.039. The proposed amendments to this rule would eliminate the specific due date for submission of call reports to avoid any conflict or confusion should the National Credit Union Administration (NCUA) establish a different date for submitting its Form 5300.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.209.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.209.

TITLE 7. BANKING AND SECURITIES  
Part 6. Credit Union Department  
Chapter 91. Chartering, Operations, Mergers, Liquidations  
Subchapter B. Organization Procedures

The Credit Union Commission (the Commission) proposes amendments to Section 91.209 concerning the submission of call reports and other information requests. The proposed amendment would eliminate the specific due date for submission of call reports to avoid any conflict or confusion should the National Credit Union Administration (NCUA) establish a different due date for submitting Form 5300.

In general, the purpose of the amendments to Section 91.209 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the Texas Register on April 21, 2017 (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

NCUA has established, in recent years, various deadlines for the submission of its Form 5300, which have been inconsistent with the Department's existing deadline. To avoid the need to amend Section 91.209 each time NCUA institutes a new due date, the proposed change would prescribe that a timely filed Form 5300 with the NCUA will comply with the reporting requirements of this rule, unless the commission orders otherwise. Therefore, a duplicate copy of Form 5300 with the Department would not be required.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater ease of use of the rule and the lessening of regulatory burden on credit unions by avoiding duplicative information reporting on different dates. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, 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*.

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

Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 122.101, which directs credit unions to submit call report to the commissioner.

The specific section affected by the proposed amendments is Texas Finance Code, Sections 122.101.

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#### §91.209. Call Reports and Other Information Requests.

- (a) Each credit union shall **file prepare and submit, in a manner prescribed by the commissioner, a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter.** Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.
- (b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.
- (c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty \$50 for each day or fraction of a day such report or document is in arrears.
- (d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.
- (e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.
- (f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to **cause the NCUA to reduce or** negate **its own penalty assessment against** the credit union **being assessed a civil money penalty** under Section 202 of the Federal Credit Union Act (12 U.S.C. §1782) for late or false/misleading filing of a quarterly call report (Form 5300). **The Department shall abate the penalty,** in part, if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, **assessed by the Department,** however, shall not be decreased below the amount authorized to be **assessed levied** under subsection (a).

## **MERGERS/CONSOLIDATIONS**

### **E (g) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC Section 91.1003 Concerning Mergers/Consolidations.**

**BACKGROUND:** The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter J under Texas Government Code Section 2001.039. The proposed amendments to this rule would require credit unions to include in their merger plan a description of any arrangements providing a material increase in compensation or benefits, of any sort, to a board member or senior management employee in connection with the merger/consolidation. The proposed change will ensure the credit unions have more complete information about financial arrangements that would not otherwise be received if the merger/consolidation is not completed.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.1003.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.1003.



## TITLE 7. BANKING AND SECURITIES

### Part 6. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

##### Subchapter J. Changes in Corporate Status

The Credit Union Commission (the Commission) proposes amendments to Section 91.1003 concerning voluntary mergers and consolidations. The proposed amendment would require credit unions to include in their merger plan a description of any arrangements providing a material increase in compensation or benefits, of any sort, to a board member or senior management employee in connection with the merger/consolidation. The proposed change will ensure the credit unions have more complete information about financial arrangements that would not otherwise be received if the merger/consolidation is not completed.

In general, the purpose of the amendments to Section 91.1003 is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, B, J, L under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters A, B, J, and L was published in the Texas Register on April 21, 2017 (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review.

As proposed to be amended Section 91.1003 would require that financial arrangements, which might have the potential to undermine the impartiality of an individual, are disclosed before a credit union considers whether to approve a merger/consolidation proposal. The proposed disclosure of financial arrangements is intended to be broad in scope, applying to any material increase in compensation or benefits that would not be provided but for the merger/consolidation, regardless of whether the increase is made before or after the completion of the merger/consolidation.

With the proposed amendment the Department does not intend to substitute its business judgment for that of the boards of the credit unions on marketplace demands and reasonable compensation arrangements. The proposed rule change simply focuses on transparency and the principle that full disclosure usually results in more informed and better credit union decisions.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater transparency of financial arrangements that might create conflicts of interest for certain individuals involved in a merger/consolidation. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@tud.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*.

The amendments are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 122.156, which sets out the requirements for rules adopted for mergers or consolidations.

The specific section affected by the proposed amended rule is Texas Finance Code, Section 122.156.

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### §91.1003. Mergers/Consolidations.

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

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

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

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

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

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

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

**(1) The terms and conditions of the merger/consolidation including a detailed description of any remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other financial rewards or benefits that any board member or senior management employee of the acquiree credit union may receive in connection with the merger/consolidation;**

**(2) (1)** the current financial reports of each credit union;

**(3) (2)** the combined financial reports of the two or more credit unions;

**(4) (3)** an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(f) Commissioner Action on the Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Completion of Merger/Consolidation.

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

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

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

## **VOLUNTARY LIQUIDATIONS**

### **E (h) Discussion, Consideration, and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC Section 91.1010 Concerning Voluntary Liquidations.**

**BACKGROUND:** The proposed new rule will provide guidance to credit unions when they are considering a voluntary liquidation of the institution. The guidelines contained in this proposed new rule will enable the board of directors or liquidating agent to conduct the liquidation of the credit union in a more orderly and expeditious manner and to arrange distribution of the assets to the members without undue delay.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve for publication and comment the proposed new Rule 7 TAC Section 91.1010.

**RECOMMENDED MOTION:** I move that we approve for publication and comment in the *Texas Register* the proposed new Rule 7 TAC Section 91.1010.

TITLE 7. BANKING AND SECURITIES  
Part 6. Credit Union Department  
Chapter 91. Chartering, Operations, Mergers, Liquidations  
Subchapter J. Changes in Corporate Status

The Credit Union Commission (the Commission) proposes new Section 91.1010 concerning voluntary liquidations. The proposed new rule will provide guidance to credit unions when they are considering a voluntary liquidation of the institution. The guidelines contained in this proposed new rule will enable the board of directors or liquidating agent to conduct the liquidation of the credit union in a more orderly and expeditious manner and to arrange distribution of the assets to the members without undue delay.

In general, the purpose new Section 91.1010 is resulting from the commission's review of Chapter 91 Subchapter J under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters J was published in the Texas Register on April 21, 2017 (42 TexReg 2269) are proposed as a result of the Department's general rule review. The department did not receive any comments on the notice of intention to review, however, the Department has previously received inquiries seeking information regarding voluntary liquidations.

A voluntary liquidation is the dissolution of a solvent credit union with the assets being sold or collected, liabilities paid, and shares and deposits distributed under the direction of the board of directors or a duly appointed liquidating agent. Voluntary liquidation is an option only if the credit union is solvent. Texas Finance Code Section 126.101 prescribes that the commissioner shall issue a conservatorship order and appoint a conservator to manage a credit union if the commissioner finds the credit union is insolvent or in imminent danger of insolvency.

Overall, the proposed new rule will serve as a guide for conducting the voluntary liquidation of a credit union. The purpose for each new subsection is provided in the following paragraphs.

Subsection (a) Definitions, defines the terms, "voluntary liquidation," "liquidation date," and "liquidating agent."

Subsection (b) Initiating voluntary liquidation process, describes the timeframes and the required processes, once it is determined that liquidation is advisable and other alternatives are not acceptable, and the board of directors has voted to present the question of liquidation to the credit union's membership.

Subsection (c) Notice of liquidation, explains the initial requirements upon an affirmative vote by the membership to liquidate, including notifying the Department, members, and creditors, and the publishing of a public notice, if so directed by the Department.

Subsection (d) Transaction of business during liquidation, delineates the activities that must be suspended, discontinued, or require prior approval after affirmative vote by the membership to

liquidate. The subsection also prescribes that members must receive specific notice to discontinue the use of share and credit cards by a specified date.

Subsection (e) Liquidation plan, imposes a requirement that the board of directors develop a formal written plan for liquidation of the credit union's assets and the payment of shares/deposits. The plan must address prescribed areas and provide for the liquidation of the credit union within one year of the liquidation date.

Subsection (f) Approval of the liquidation proposal by membership, specifies that if the membership does not approve the recommendation, the board of directors may only seek the Department's consent to resume business, resubmit the question to the membership, or request the appointment of a conservator.

Subsection (g) Distribution of assets, stipulates the order upon which all legitimate creditor claims shall be paid. The subsection also specifies the action necessary after all assets have been converted to cash and the books are closed.

Subsection (h) Continued supervision of voluntary liquidation, reaffirms that a liquidating credit union continues to be subject to the regulation and supervision of the Department. The Department may require the liquidating credit union to submit reports and the Department may conduct examination of the credit union as necessary or appropriate.

Subsection (i) Retention of records, provides that certain records of the liquidating credit union must be retained for a period of five years. The board of directors must designate a person to be responsible for the retained records.

Subsection (j) Certificate of dissolution and liquidation, establishes a deadline of 120 days after final distribution for the board of directors to provide certification to the Department that the credit union has been successfully dissolved and liquidated.

Subsection (k) Inquires after liquidation, prescribes that the person designated by the board of directors to retain the records of the liquidating credit union is also responsible for the timely response to any inquiries received after the liquidation has been completed.

Before action is taken to voluntarily liquidate a credit union, the board of directors is encouraged to determine whether liquidation is advisable by carefully considering all factors leading to the proposal and carefully considering all available options. Generally, voluntary liquidation should only be considered in extreme cases because voluntary liquidation may cause at least a portion of members' shares/deposits to not be available during the liquidation. This inability of members to access their funds would likely impose significant personal hardships on the members. An example of an extreme case that may possibly justify a voluntary liquidation is a situation in which the credit union has determined that failure to voluntarily terminate the credit union within the next 24 months will most likely result in insolvency or involuntary liquidation.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity as to what is expected of a credit union that elects to voluntarily liquidate. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to [CUDMail@hud.texas.gov](mailto:CUDMail@hud.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*.

The amendments are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Sections 126.451, 126.452, 125.453, 126.454, 126.455, 126.456, 126.457, and 126.458 which sets out the requirements for voluntary liquidations.

The specific section affected by the proposed amended rule is Texas Finance Code, Sections 126.451, 126.452, 125.453, 126.454, 126.455, 126.456, 126.457, and 126.458.

### **§91.1010. Voluntary Liquidation.**

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

(1) Voluntary liquidation means the dissolution of a credit union with the assets being sold or collected, liabilities paid, and shares/deposits distributed under the direction of the board of directors.

(2) Liquidation date means the date the membership votes to approve liquidation.

(3) Liquidating agent means the person or persons appointed by the board of directors to take possession of, manage, and liquidate the credit union.

(b) **Initiating voluntary liquidation process.**

(1) Unless the commissioner has issued a liquidation order, the board of directors may, by resolution, recommend the voluntary dissolution of the credit union and direct submission of the question to the members of the credit union.

(2) Within five days after the date the resolution is adopted, the chairman of the board shall notify the commissioner, in writing, of the reasons for the proposed liquidation including a balance sheet and income statement as of the previous month-end.

(3) The board shall act promptly to obtain the membership's approval in accordance with subsection (e) of this section.

(4) Not later than the 10<sup>th</sup> day before the date of the meeting to request the membership's approval, notice of the meeting shall be mailed by first-class mail to each member of the credit union and the commissioner. The notice shall inform members that they have the right to vote on the liquidation proposal in person at the membership meeting called for that purpose or by written ballot, included with the notice. Written ballots must be received no later than the time and date stated on the notice.

(5) A majority of the members casting votes at the meeting or by mail may vote to approve the board's recommendation and dissolve and liquidate the credit union. If less than a majority vote to approve, the credit union may, subject to the commissioner's approval, resume normal business, resubmit the question of liquidation to the membership or request the appointment of a conservator under the Act and the rules adopted under it.

(6) After an affirmative vote by the members to dissolve and liquidate the credit union, the board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for fair and equitable distribution of the assets to the members.

(7) Within 5 days of an affirmative vote to dissolve and liquidate the credit union the chairman, or president, and the secretary shall notify the commissioner of the intention to liquidate together with a list of the officers and directors.

(c) **Notice of liquidation.**

(1) If the vote to dissolve and liquidate the credit union is affirmative, the credit union shall:

(A) File a notice with the Department within five days of the liquidation date;  
and

(B) Mail a copy of the notice of liquidation shareholders/depositors, other known creditors, and know claimants of the credit union within ten days of the liquidation date.

(2) A credit union shall publish public notice of liquidation, if so directed by the Department.

(3) Creditors shall be provided at least 30 days from the liquidation date to submit their claims.

**(d) Transaction of business during liquidation.**

(1) Immediately after notice of the special meeting to consider voluntary liquidation is mailed to the membership, admission of new members shall be suspended. No new extensions of credit shall be funded during the period between the board of directors' adoption of the resolution recommending voluntary liquidation and the membership meeting called to consider voluntary liquidation, except for the issuance of loans fully secured by a pledge of shares and the funding of outstanding loan commitments approved before adoption of the board resolution. Collection of loans and interest, payments of necessary expenses, clearing of share drafts and credit card charges shall continue.

(2) If the vote to dissolve and liquidate the credit union is affirmative, payments on shares/deposits, withdrawal of shares/deposits (except for transfer of shares/deposits to loans and interest), transfer of shares/deposits to another share/deposit account, granting of loans, and making of investments other than short-term investments shall be discontinued. Collection of loans and interest and payment of necessary expenses will continue during the period of liquidation. Members shall be notified to discontinue the use of share drafts and credit cards, and items will not be cleared 15 days from the liquidation date.

(3) Approval of the Department must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders/depositors dollar-for-dollar, principal plus any interest accrued or due to the shareholder/depositor, through the liquidation date.

**(e) Liquidation Plan.** The board of directors shall develop and approve a written plan for the liquidation of the assets and payment of shares/deposits. The liquidation plan should provide for the liquidation of the credit union within one year of the liquidation date. At a minimum, credit union's liquidation plan should address the following areas:

(1) Qualifications and experience of the proposed liquidating agent and the compensation and expenses attributable to the service of such person or persons;

(2) Income and expense items must be projected to determine that sufficient funds will be available to finance the liquidation of the credit union;

(3) Payment of all debts and liabilities owed by the credit union should be scheduled;

(4) Partial distributions of shares/deposits should be considered as funds become available from the liquidation of assets;

(5) Distribution of the credit union's assets that remain after settlement of debts and liabilities to all persons entitled to them;

(6) Disposition or maintenance of any remaining or unclaimed funds, real or personal property, or other assets;

(7) Surety bond coverage of all person who will handle or have access to funds of the credit union and the proposed discovery period after final distribution of assets; and

(8) Retention of the credit union's records after liquidation.

**(f) Approval of the liquidation proposal by membership.**

(1) A majority of the members casting votes at the meeting or by mail may vote to approve the board's recommendation and dissolve and liquidate the credit union. If less than a majority vote to approve, the credit union may, subject to the commissioner's approval, resume normal business, resubmit the question of liquidation to the membership or request the appointment of a conservator under the Act and the regulations adopted under it.



(2) Within 5 days of an affirmative vote to dissolve and liquidate the credit union the chairman or president, and the secretary shall notify the commissioner of the intention to liquidate together with a list of the officers and directors.

**(g) Distribution of assets.**

(1) The liquidating agent shall use the credit union's assets to pay, in the following order:

- (A) Secured creditors to the extent of the value of their collateral;
- (B) Liquidation expenses, including a surety bond;
- (C) Depositors;
- (D) General creditors, including secured creditors to the extent that their claims exceed the value of their collateral; and
- (E) Distributions to members in proportion to the shares/deposits held by each member.

(2) After all assets of the credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectible and all obligations of the credit union have been paid/settled, except for shares/deposits due its members, the books shall be closed and the pro rata distribution to the members shall be computed. The computation shall be based on the total amount in each share/deposit account as of the liquidation date or the date on which all share drafts have cleared, whichever is later.

(3) Payments must be made to members promptly after the pro rata distribution has been computed. The credit union may mail a check to at his or her last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means authorized by a member.

(4) Unclaimed share/deposit accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be escheated in accordance with Texas laws.

(5) The Department shall be notified in writing within five days when the final distribution of assets to the members is started.

**(h) Continued supervision of voluntary liquidation.**

(1) A voluntary liquidation of a credit union shall be conducted only with the continued supervision of the Department. The commissioner may conduct any examinations of the credit union the commissioner considers necessary or appropriate.

(2) The credit union shall submit a report to the Department at the start of liquidation showing the credit union's balance sheet as of the start of liquidation. The liquidating credit union shall submit a report of progress as requested by the Department.

(3) If the commissioner has reason to conclude the voluntary liquidation of a credit union is not being safely or expeditiously conducted, the commissioner may take possession of the business and property of the credit union in the same manner, with the same effect, and subject to the same rights accorded the credit union as if the commissioner had issued a liquidation order. The commissioner may appoint a new liquidating agent and proceed to liquidate the affairs of the credit union as provided in the Finance Code, Title 3, Subtitle D, Subchapter E.

**(i) Retention of records.**

(1) The board of directors shall appoint a custodian for the credit union's records which are to be retained after the final distribution of assets.

(2) All records of the liquidating credit union necessary to establish that creditors were paid and that assets were fair and equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

(j) **Certificate of dissolution and liquidation.** Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Department.

(k) **Inquiries after liquidation.** It will be the responsibility of the custodian for the credit union's records to respond timely to inquiries after liquidation.

## **OPERATING PLAN AND BUDGET**

**E. (i) Discussion, Consideration, and Possible Vote to Take Action to Approve Both the Department's Operating Plan and Budget for Fiscal Year 2018.**

**BACKGROUND:** As detail in the following pages, the proposed budget for FY 2018 is \$4,063,453, which represents a 3.3 percent increase from the FY 2017 budget. The proposed budget includes funding for performance-based merit increases for staff members as well as funding to not only develop a new database but also create a secure data transfer portal.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve the proposed FY 2018 Operating Plan and Budget.

**RECOMMENDED MOTION:** I move that the Commission approve the proposed FY 2018 Operating Plan and Budget, with a total budget of \$4,063,453 and 29.5 FTEs.

## SUMMARY OF PROPOSED FY 2018 BUDGET

Budget Needed to Continue Existing Services \$3,890,312

### Strategic Initiative:

❖ Merit Increase Funding Pool (*Priority #2*) \$ 88,026

Total Strategic Initiatives \$ 88,026

### Replacement/Capital Improvement Plan:

❖ Conversion of SAGE/ACT Database (*Priority #1*) \$ 50,000

❖ Secure Data Transfer Portal (*Priority #3*) \$ 35,135

Total Replacement/Capital Improvements \$ 85,135

**Grand Total Agency Requested Budget \$4,063,453**

Authorized Full-Time-Equivalent Positions **29.5**

## **CONTRACTUAL OBLIGATIONS IN PROCESS FY 2017**

Carpet Replacement for CUD Office	\$20,340
Replacement of HVAC System	<u>\$22,767</u>
<b>Total FY17 Contractual Obligations in Process*</b>	<b>\$43,107*</b>

\*Commission policy prescribes that funds which are legally obligated pursuant to a legally binding agreement are considered obligated funds. In FY 2017 the above listed items are considered obligated funds. If for any reason these projects are not completed by the end of the fiscal year it will be necessary to provide funding in FY 2018 to cover these legal obligations. As provided in the Commission's policy the budget authority for obligated funds in FY 2017 will automatically be carried over to FY 2018. It should be noted, however, that the obligated funds may only be used for the purposes of the obligation. If the expenditures remitted for the completed obligation are less than the carried over budgeted authority, the remaining obligated funds cannot be recommitted or reused in FY 2018 without the expressed permission of the Commission.

## BUDGET NEEDED TO CONTINUE EXISTING SERVICES

### FY 2018 Base Budget Reconciliation

Object of Expenses	FY 2017 Budget	Adjustment	Base FY 2018
Salaries and Wages	\$2,413,819		\$2,413,819
Payroll Related Costs	762,997		762,997
Travel	428,921	\$5,282 <sup>1</sup>	434,203
Professional Services/Fees	70,854	<\$10,854 <sup>2</sup> >	60,000
Supplies /Materials	36,518	<\$3,000 <sup>3</sup> >	33,518
Communication/Utilities	38,320	\$4,580 <sup>4</sup>	42,900
Repairs/Maintenance	79,290	<\$49,590 <sup>5</sup> >	29,700
Rentals and Leases	5,520		5,520
Printing and Reproduction	2,855		2,855
Other/State of Texas Services	96,300	\$8,500 <sup>6</sup>	104,800
<b>Grand Total</b>	<b>\$3,935,394</b>	<b>&lt;\$45,082&gt;</b>	<b>\$3,890,312</b>

<sup>1</sup> Increased estimated annual estimated costs for Public Transportation (#7101), Mileage (#7102), Incidental and Parking (#7105) and Meals/Lodging (#7106) by 1.3 percent (CPI average).

<sup>2</sup> Reduced baseline by \$10,854 as follows: \$10k one-time consultant expense under contract services (#7242); additional \$500 reduction in contract services (#7242); \$500 reduction in Accounting (#7245); \$4,800 reduction in Data Processing (#7284); and a \$4,946 increase in Legal Services (#7258).

<sup>3</sup> Reduced baseline by \$3k due to consumables projected costs being significantly below budget. Funds were reallocated to Legal Services under Professional Services/Fees category.

<sup>4</sup> Increased baseline \$4,580 due to dedicated data circuit costs being projected at \$5,780 above budget. Funds for increase were reallocated from Data Processing Services (#7284) under Professional Services/Fees category.

<sup>5</sup> Reduced baseline by \$49,590 due to estimated one-time costs associated with HVAC and carpet replacement projects.

<sup>6</sup> Increased baseline by \$8,500 as follows: \$4,500 due to new dues structure being implemented by NASCUS during FY18; and \$4k due to training costs anticipated to increase for new office staff and examiners designated as Discipline Matter Authorities.



## OVERVIEW OF AGENCY REQUESTED FY 2018 BUDGET

### Proposed Budget with Strategic Initiative & Replacement/Capital Improvement Plan

Object of Expenses	Base Budget	Strategic Initiatives	Budget Request
Salaries and Wages	\$2,413,819	\$66,853	\$2,480,672
Payroll Related Costs	762,997	21,173	784,170
Travel	434,203		434,203
Professional Services/Fees	60,000		60,000
Supplies /Materials	33,518		33,518
Communication/Utilities	42,900		42,900
Repairs/Maintenance	29,700		29,700
Rentals and Leases	5,520		5,520
Printing and Reproduction	2,855		2,855
Other/State of Texas Services	104,800	85,135	189,915
<b>Grand Total</b>	<b>\$3,890,312</b>	<b>\$173,161</b>	<b>\$4,063,453</b>

Percentage Increase over FY 2017 Budget	3.3%
-----------------------------------------	------

<b>Projected Fiscal Year 2018</b> (Using Assets as of March 31, 2017 <sup>1</sup> )	
Potential Fees – Rule 97.113(b)	\$4,325,622 <sup>2</sup>
Proposed Budget FY 2018	<\$4,063,453>
Potential Discount – Rule 97.113(d)	\$262,149

**Note:** As required by Commission policy, staff has reviewed all fees established by Rule 97.113 and recommends that the Commission make no changes to the fee structure. The fees are currently at a level that ensures the recovery of the full cost of operating the Department.

<sup>1</sup> Actual fees will be based on assets as of June 30, 2017.

<sup>2</sup> Actual fees will be based on assets as of June 30, 2017.



## REVENUE HISTORY

### Fiscal Year 2014

Total Fees Prescribed by Rule 97.113(b)	\$3,577,469
Discount Permitted by Rule 97.113(d)	<\$ 771,355 >
Actual Assessment Collected	\$2,806,114

### Fiscal Year 2015

Total Fees Prescribed by Rule 97.113(b)	\$3,751,870
Discount Permitted by Rule 97.113(d)	<\$ 323,434 >
Actual Assessment Collected	\$3,428,436

### Fiscal Year 2016

Total Fees Prescribed by Rule 97.113(b)	\$3,913,383
Discount Permitted by Rule 97.113(d)	<\$ 674,804 >
Actual Assessment Collected	\$3,238,579

### Fiscal Year 2017

Total Fees Prescribed by Rule 97.113(b)	\$4,112,272
Discount Permitted by Rule 97.113(d)	<\$ 429,335 >
Actual Assessment Collected	\$3,682,937

## PERFORMANCE MEASURES

Measure	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017 <small>(YTD- 4/17)</small>
Number of Credit Unions	190	188	185	184	186
Credit Union Total Assets (billions)	\$29.3	\$31.6	\$33.8	\$35.9	\$39.1
Percent Increase in Credit Union Total Assets	6.9%	7.8%	7.0%	6.2%	8.9%
Average Regulated Assets per Examiner (millions)	1.84	1.76	1.88	1.80	1.95
Number of Examinations	160	163	156	166	115
Percent of Credit Union Examined	84%	87%	84%	90%	62%
Percent of Credit Union Assets Examined	89%	91%	92%	94%	54%
Number of Remedial Contacts	44	44	38	37	20
Percent of Credit Unions Rated 1 or 2 (CAMELS)	82%	85%	82%	86%	89%
Percent of Assets in 1 or 2 Rated Credit Unions (CAMELS)	83%	83%	82%	93%	94%
Percent of Well-Capitalized Credit Unions	95%	97%	97%	98%	98%
Number of Credit Unions Rated 3, 4, or 5 (CAMELS)	33	30	33	25	21
Annual Examiner Turnover	6.3%	11.1%	22.2%	23.1%	5.3%
Average Tenure of Departing Examiners (Months)	16	54	50	37	14
Number of Examiners Hired	2	4	3	7	1
Annual Staff Turnover	16.3%	10.9%	18.2%	18.3%	10.6%
Number of Formal Examiner Training Days	134	127	169	311	215
Number of Applications Processed	49	66	57	57	39
Number of Request – Interpretation/Opinion	4	5	4	2	2
Number of Public Information Requests	17	13	18	25	6
Number of Written Credit Union Complaints Received	223	230	253	265	187



## STRATEGIC INITIATIVE FUNDING REQUEST

Initiative Name: **Merit Increase Funding Pool** (Priority: 2)

MERIT INCREASE FUNDING POOL	
Objects of Expense	Estimated Costs
Salary & Wages	\$66,853
Payroll Related Costs	\$21,173
Travel Expenses	
Other Operating Expenses	
<b>Total</b>	<b>\$88,026</b>

**Description/Justification:** Merit pay has traditionally been one of the most effective tools of motivating staff to perform to the best of their ability. Recognizing and rewarding high performance is a key priority for driving excellence at the Department. A monetary reward in terms of a better pay is the strongest incentive for staff who are working with a greater enthusiasm, commitment and skills than the other staff members around them. When budgeted, all classified staff members participate in the Department's merit pay program. The last merit increases for the staff was budgeted for September 1, 2016.

The Department is proposing to establish a pool to fund merit and promotion increases for staff. The aggregate amount of the pool will be equivalent to 3.0% of the total salaries for the applicable staff positions. All awards made from the pool will be based on performance.

Funding of this item is necessary for the Department to maintain adequate examiner resources to ensure an adequate level of supervision to meet regulatory responsibilities, achieve established performance measures, and preserve a safe and sound credit union system. As credit unions continue to grow in sophistication and complexity, the ability to retain highly skilled and qualified examiners is an essential component in meeting these objectives. Thus, it is imperative that the Department keep examiner salaries at competitive levels which help to minimize examiner turnover.

In absence of a merit based pay program, there is the risk of discouragement for the highest performing staff. Talented staff is aware of their strengths and like to accept the challenges of a performance linked pay. If they find that all

staff is awarded a uniform pay without any regard to individual merit, there is a risk of the best performing staff leaving the Department.

**External/Internal Factors:**

*Internal:* Merit pay is an approach to compensation that rewards the higher performing employees with additional pay or incentive pay. Merit pay will help the Department differentiate between the performance of high performing and low performing employees, and reward the performance of the higher performers to a greater degree. As a result, it is believed that merit pay is the best opportunity to ensure that your outstanding performers remain with the Department and continue to make their significant contributions.

*External:* Although the economy has improved and job market is more robust, salary increase budgets for U.S. companies continue to show limited growth. Per several surveys, the average salary increase budget is expected to be 3.0% in 2017, like the average increase budget in 2016.

<b>Total U.S. Salary Budget Increases</b>				
<b>Employee Category</b>	<b>Actual 2016 Mean</b>	<b>Actual 2016 Median</b>	<b>Projected 2017 Mean</b>	<b>Projected 2017 Median</b>
Nonexempt hourly	3.0%	3.0%	3.1%	3.0%
Nonexempt salaried	2.9%	3.0%	3.0%	3.0%
Exempt salaried	3.0%	3.0%	3.1%	3.0%
Officers/executives	3.0%	3.0%	3.1%	3.0%
All	3.0%	3.0%	3.1%	3.0%
<b>Source: WorldatWork 2016-2017 Salary Budget Survey report.</b>				
The “mean” is the mathematical average while the “median” is the middle value after listing reported budget increases in successive order. Outliers, or extreme values on either the high or low end, have the biggest effect on the mean and less effect on the median.				

# **REPLACEMENT/CAPITAL IMPROVEMENT PLAN**

## **FY 2018-2020**

### **FY 2018**

#### Proposed Maintenance Projects:

#### Estimated Cost

*None*

#### Proposed Capital Improvements:

*SAGE/ACT Database Conversion<sup>1</sup>*

*\$50,000*

*Secure Data Transfer Portal<sup>2</sup>*

*\$35, 135*

<sup>1</sup> The funding of this capital improvement is necessary to build a hosted solution to manage and report the Department's internal organizational processes, that more closely aligns to the organizational needs and integrates with the Office 365 solution. This will provide a more seamless view of the end-to-end organizational process performance and eliminate some of the current manual processes used to fill the information gaps. The current version of the database (ACT!) is no longer supported nor is it backed by the newer Windows 10 operating system.

<sup>2</sup> Funding of this capital improvement is necessary to build a Secure Data Transfer Portal that will enable the Department's examiners and credit unions to share examination-related documents. The solution will make it possible to provide file transfers, file access and file management over a reliable data stream.

#### Related New Operating and Maintenance Costs (if any):

On-going costs related to the SAGE/ACT Database Conversion initiative are estimated to be minimal and tied to periodic increases with Office 365/SharePoint storage costs, and the depreciation of any hardware and software.

Most the costs shown for the Secure Data Transfer Portal are recurring annual costs, including the cost for service and maintenance of the hardware and software, the Department of Information Resource's (DIR's) administrative costs of 3 percent of the cost for service and maintenance of hardware and software; and the cost of increasing the core network bandwidth to a level sufficient to ensure that data is transmitted quickly and secure. Only \$2,550 of the amount shown are one-time expenses; thus \$32,635 is estimated to be the recurring annual cost amount associated with this capital improvement project.

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**FY 2019**

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**Proposed Maintenance Projects:****Estimated Cost**

*None*

**Proposed Capital Improvements:**

*Remodel Restrooms for ADA Compliance and Energy Efficiency<sup>1</sup>*      **\$203,500**

<sup>1</sup> The building's toilet partitions need to be replaced to be compliant with Title III of the American with Disabilities Act ("ADA") and due to rust. The current toilet partitions are not large enough for an individual with a disability to maneuver. Other ADA improvements to the building's restrooms include: insulating lavatory pipes under sinks to prevent burns, installing a raised toilet seat, installing a full-length bathroom mirror, and repositioning the paper towel dispensers. Additionally, the sink fixtures should be replaced with modern, energy-efficient models, the toilets should be replaced with low-flow toilets, and the toilet water supply hoses are rusted and should be replaced to prevent a water leak.

**Related New Operating and Maintenance Costs (if any):**

The installation of the new ADA required restroom improvements will not result in any new material operating or maintenance costs, other than depreciation of the capital improvement. The installation of more energy-efficient faucets and toilets will reduce operating and maintenance costs.



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**FY 2020**

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Proposed Maintenance Projects:

Estimated Cost

*None*

Proposed Capital Improvements:

*Replace the Roof<sup>1</sup>*

**\$251,500**

<sup>1</sup> The Department's roofing is a low-slope with built-up roof. It is deteriorated and should be replaced with no reported leaks. The Department's current roof is out of warranty for workmanship even though it maintains a materials warranty; however, collecting on a defective materials warranty is a herculean task because so many issues can be blamed on workmanship. Additionally, flashing was not added to the roof in critical places when the roof was first installed. The Texas Facilities Commission provided us the following roof options.

System	Bldg. Ht.	Slope	Unit Cost	Sq. Ftg.	Construction Cost	Escalation to 2018	Soft Cost/Contingency	Total
Mod. Bitumin (Hot Asphalt/Heat Welded)	1 – 2 Story	Low ¼"/Ft.	\$30	4,200	\$126,000	\$139,700	\$111,800	\$251,500
Single Ply TPO	1 – 2 Story	Low ¼"/Ft.	\$30	4,200	\$126,000	\$139,700	\$111,800	\$251,500
Single Ply PVC	1 – 2 Story	Low ¼"/Ft.	\$30	4,200	\$126,000	\$139,700	\$111,800	\$251,500
Arch. Metal *	1 – 2 Story	Pitched 4 : 12 Min.	\$25 - \$30	4,200	\$105,000 to \$126,000	\$139,700	\$111,800	\$251,500

\* Not a recommended solution by TFC's roofing consultant.

Related New Operating and Maintenance Costs (if any):

The installation of new roof will not result in any new material operating or maintenance costs.



## EXHIBIT A

### CAPITAL IMPROVEMENT FUNDING REQUEST

Capital Improvement #1: **Sage Database Conversion** (Priority: 1)

SAGE DATABASE CONVERSION	
Objects of Expense	Estimated Costs
Development Costs	\$50,000
Total	\$50,000

#### **Description/Justification:**

Funding of this capital improvement is necessary to build a hosted solution to manage and report the Department's internal organizational processes, that more closely aligns to the organizational needs and integrates with the SharePoint Office 365 solution. This would provide a more seamless view of the end-to-end organizational process performance and eliminate some of the current manual processes used to fill in the information gaps. The current version of the database (ACT!) is no longer supported nor is it supported by the newer Windows 10 operating system.

The Department currently has several internal organizational processes for governing, collaborating and reporting on the Department's compliance to and performance of business functions. The desired solution will address these governance, collaboration, and reporting needs, by providing a database solution to manage all credit union information, manage and track performance of organizational processes, collaborate with internal and external staff, build and publish custom reports, and integrate with the external SharePoint document management system.

The Department will seek an independent, third-party Vendor to provide the services to deliver a solution to automate the tracking and reporting of internal organizational processes, and integrate the solution more closely with SharePoint Office 365. The proposed solution will be non-proprietary and scalable. The Department requires the development of a solution to best fit the business of the CUD.

***Appendix A***

STATEMENT OF WORK (SOW)  
for  
DELIVERABLES-BASED INFORMATION  
TECHNOLOGY SERVICES

*CUD Business Process Automation  
Technology Category*

*Credit Union Department*

*July \_\_, 2017*

# Capital Improvement #1: **Sage Database Conversion**

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# Capital Improvement #1: Sage Database Conversion

## 1. Introduction

The Credit Union Department (CUD) is the state agency responsible for overseeing state-chartered credit unions in Texas. The Department's mission is to supervise, regulate and examine Texas credit unions in order to safeguard the public interest, protect the financial interests of credit union members, and promote public confidence in the credit union industry.

## 2. Background

CUD regulates approximately 184 state-chartered credit unions. Information concerning those credit unions are located in CUD's Act! 2012 Premium by Sage CRM database (Act!). Act! is the CRM system for managing all credit union contact information, tracking of major organizational processes, and periodic report generation. Act! is thus, a current CRM system and reporting database. Act! is a client/server CRM that is a highly customized application with plugins Impact Suite 4.2 by Durkin computing and Impact Report Designer 4.2 by Durkin computing. This combination of programs allows for the creation of custom tables and views for recording credit union related information and information specific to CUD operations as well as the creation of custom reports. Act! Includes information concerning certain credit union internal organizational processes, such as examinations, remedial examinations, field of membership applications, complaints resolution, and public records information requests.

However, CUD does not utilize the full capabilities of the Act! CRM, because, the primary use of the tool is to track and report on the performance of their internal organizational processes. Therefore, the CUD does not believe that a CRM tool is fit for its purpose.

In addition, CUD uses an Office 365™ SharePoint® solution to collect, track, disseminate, and eventually archive all documentation related to the internal organizational processes. However, the SharePoint solution is not currently integrated with the Act! CRM.

## 3. Goals

The CUD desires a hosted solution to manage and report on their internal organizational processes, that more closely aligns to their organizational needs and integrates with the SharePoint Office 365 solution. This would provide a more seamless view of the end-to-end organizational process performance and eliminate some of the current manual processes used to fill in the information gaps.

## 4. Scope

The CUD seeks an independent, third-party Vendor to provide the services to deliver a solution to automate the tracking and reporting of internal organizational processes, and integrate the

# Capital Improvement #1: Sage Database Conversion

solution more closely with SharePoint Office 365.

The proposed solution needs to be non-proprietary, scalable, with no hidden costs. This solution does not have to be a SharePoint solution: The CUD wants a solution to best fit the business of the CUD.

## 5. Solution Overview and Requirements

The CUD has in place several internal organizational processes for governing, collaborating and reporting on the organizations compliance to and performance of their key business functions. The desired solution must address these governance, collaboration, and reporting needs, by providing a database solution to manage all credit union information, manage and track performance of organizational processes, collaborate with internal and external CUD personnel, build and publish custom reports, and integrate with the external SharePoint document management system.

### a. Solution Design - Requirements

#### i. Solution Platform Overview

- The solution platform will provide the capabilities to host the core application, and provide all the supporting user and administrative functions.
- In addition to the core capabilities of the CUD solution, the platform on which the solution resides must meet the requirements:
  - Fully hosted solution, outside of the CUD firewall
  - Provide the ability to integrate with the existing SharePoint O365 solution, currently used for storage, retrieval, and archival, of business documentation
  - Provide the ability for the external users to logon remotely and interact with the solution in performance of key business functions
  - Support Single Sign-on and integration with the organization's active directory
  - Provide 24 x 7 system availability
  - Provide support during regular business hours
  - Provide business continuity and disaster recovery solution
  - Provide support for custom report generation and development
  - Solution must provide the agility and simplicity to promote sustainable development



## Capital Improvement #1: **Sage Database Conversion**

- The solution meets or exceeds DIR's standards for technical currency of hardware and software (n/n-1)
- The solution must provide for installation, configuration, and maintenance of all components of the system; including the operating system and other software components to insure upgrades and security patching activities are performed timely.

### **b. Home Page**

The CUD solution will provide access to perform the organizational functions from a single user interface (home page). Access to user interface will be controlled by group level permissions. From the landing page, the user will be able to login internally or remotely, manage an organizational process, view organizational process database transactional records, view organizational process performance reports, and access administration functions. The following are the primary functions required on the home page.

- **Navigation Links** provide remote login, access to all the organizational processes, and access to administration
- **Main Window** displays a listing of the transactional records for the selected organizational process
- **Context Menus** provide functions specific to the selected organizational processes and transactional records being displayed
- The context menu provides access to the Credit union related entities (Branch Info, Name Change, DBA, Director's fees, Correspondence), when the list of credit unions is displayed in the main window.

### **c. Database Record Access and Navigation**

The solution will display all the organizational process database records in a main window, for performing all database entry, management, and viewing.

When displayed, the user will have the following functions:

- **Record Header** – ability display records using all available fields in the database, and customize the display of the record headers. Ability to drag and drop headers to change the order of display.
- **Search Records** – using basic text search or wild card search to locate a record within the currently displayed database entity
- **Sort Records** – sort the records by any selected database column (the example shows sorting by the Status record)
- **Select Record** – select one or more records for processing

## Capital Improvement #1: **Sage Database Conversion**

- **Filter** – ability to apply a filter to the records to control which items are displayed, including the ability to set a default filter
- **Functions** – the following functions will be displayed when the Credit Union Records are displayed in the Main Window
- **Scroll through records** – scroll through the list of records displayed
- **Navigate through records** – Navigate through all the records in the database

### **d. Administrative Functions**

The solution requires the following administrative functions:

- Maintain Security
  - Manage Users permissions to application and organizational processes
  - Manage Group Permissions to application and organizational processes
  - Manage Access to Primary and Supporting functions
  - Active Directory Configuration
- Maintain Database Data Structures
  - Manage Entities (Create, Update, Delete)
  - Manage Table Structures (Create, Update, Delete)
  - Manage Data Entry Forms (Create, Update, Delete)
  - Manage Lookup Lists
- Customize the Solution
  - Customize User Interface
  - Customize Look and Feel
- General Administration
  - Backup and Recover database information
  - Configure core capabilities of system
- Reporting
  - Create Custom Visual Reports with drag and drop capabilities
  - Create Custom Report SQL Queries
  - Configure Report access and permissions
- Timesheets
  - Maintain Examiner Timesheets (create, update, delete)
  - Configure Examiner Timesheet settings
  - Configure Examiner Timesheet access

### **e. Performance Management Reports**



## Capital Improvement #1: Sage Database Conversion

There are up to 11 reports that must be migrated from the current solution, these include:

**1. Bylaw Amendments Acted On**

This report shows only what has been given preliminary decision or Final Action in the current reporting period.

**2. Consumer Complaints Resolved**

This report is based on the Complaints process and reports on the number of resolved cases for the current reporting period.

**3. Master Credit Union Examination List**

This is a listing of all the credit union examinations to date.

**4. Examination Schedule by Follow Up Date**

This is a listing of all the credit union examinations grouped by Follow-up date.

**5. Regular Exam Reports Received**

This is a listing of all the Regular Exam (RE) examinations performed within a specified report period.

**6. Remedial Exam Reports Received**

This is a listing of all the Remedial (RM) examinations performed within a specified report period.

**7. Administrative Sanctions**

This is a listing of all the administrative sanctions within the reporting period that result from an examination.

**8. Problem Credit Unions**

This is a listing of all the Problem Credit Unions to date, that result from an examination. A Problem Credit Union is one that has a code of 3,4 or 5. This is used to monitor a credit union that experiences capital, assets, management, earnings or liquidity problems.

**9. Report Processing Time Mailed Date**

This is a listing of all reports mailed within the reporting period.

**10. Time Management Summary Report**

This is a listing of all reports mailed within the reporting period.

**11. Examiner Zone Hours Summary**

This is a summary report of examiner hours by region for a specified time

## Capital Improvement #1: **Sage Database Conversion**

period.

### **f. Software**

- Provide basic templates for enhancing the solution
- Configure software solution
- Ability to natively integrate with current CUD software including, but not limited to:
  - Microsoft Office 365
  - SharePoint

### **g. Credit Union Database Entity Requirements**

The Credit Union database structure is designed to capture all the information required to manage the credit unions and support the relationship with the related organizational processes. Each related process database, is designed to capture all the information required to manage the business processes lifecycle, associate the business process to the credit union, and support the need for complex tracking and reporting.

The primary business processes related to the Credit Union entity are as follows. The solution will require migration of these of these 4 primary database entities, and the development of required interfaces for management and maintenance of the database information:

- Complaint Process – for managing complaints against credit union entities
- Bylaws Process – or managing credit union bylaws additions and changes
- Examination Process – for tracking the periodic credit union examinations
- Merger's Process – for tracking credit union mergers process

The supporting organizational processes are as follows. The solution will require the migration of these supporting database entities, and the development of required interfaces for management and maintenance of the database information:

- Open Records – for tracking open records requests
- Public Forum – for tracking attendance in open forums
- Examiner Hours – timesheet system for examiners
- Correspondence – for tracking correspondence related to both primary and supporting organizational processes
- Training - for tracking examiner trainings
- Rule Making – for tracking the rule making process



## Capital Improvement #1: **Sage Database Conversion**

- Contacts – for tracking information about the internal and external users of the solution and their related contact information
- Credit Union – for tracking information about all the state chartered credit unions
  - Branch Info – database for tracking credit union branches
  - Director's Fees – database for tracking credit union director fees
  - Name Change – database for tracking credit union name changes
  - DBA – database for tracking credit union assumed names
- Foreign Branches – for tracking non-Texas credit union branches approved to do business in Texas.

### **h. Management Reporting**

The solution must support the following requirements for all reports:

- The system must provide the ability to develop reports that can be saved for later execution
- The system must provide the ability to assign permission to the creation, editing, viewing, and execution of reports
- All reports must be hosted and available to be viewed in a read only manner on demand
- The system must provide the ability to export reports to pdf, excel, and csv formats
- The system must provide the ability to develop custom SQL queries for report creation
- The system must provide a report writer capability that allows the user to format the visual display of the report results.
- Provide predefined reports using the system data
- Ability to create ad-hoc reports for all components of the software
- Ability to create dashboards out of report and system data

## **6. Project Management and Support**

### **a. Documentation and Reporting**

Provide the following project documentation, as per CUD standards:

- Project plan
- Communication plan
- Design
- User's guide
- Business rules and requirements document
- Business process workflows

## Capital Improvement #1: **Sage Database Conversion**

- User roles and permissions documentation
- Data dictionary
- User Interface Specifications
- Development guide
- Data model/schema
- List of minimum system requirements for both a network and individual computers
- List of compatible plug-ins
- Provide training materials such as videos and documents.

### **b. Reports and Meetings**

- The Vendor is required to provide the CUD Contract Manager with weekly written progress reports of this project. These are due to the CUD Contract Manager by the close of business on Monday each week throughout the life of the project
- The progress reports shall cover all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
- The progress report shall identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.
- The Vendor will be responsible for conducting weekly status meetings with the CUD Contract Manager. The meetings will be held on a specific and agreed upon day of each week - at a time and place so designated by the CUD Contract Manager - unless revised by the CUD Contract Manager. The meetings can be in person or over the phone at the discretion of the CUD Contract Manager.

### **c. Service Level Agreement**

The Vendor will respond to support requests within agreed upon timescales.

The Vendor will resolve escalated issues within agreed upon timescales. If the issue cannot be resolved within agreed upon timelines, vendor will provide hourly progress updates.

Vendor will prepare a schedule for accomplishing this project and provide to the CUD with the proposal submission. Mandatory performance and service level expectations are listed below. Vendor may provide additional items for service level expectations. measures.

The following requirements will be completed as follows:

1. Conduct assessment of system requirements and data management needs, including interviewing subject matter experts from the CUD, and submit



## Capital Improvement #1: **Sage Database Conversion**

report of findings with graphical representations.  
Delivered within\_\_\_\_days from contract execution.

2. Evaluate CUD identified solution mapping the future environment to meet the requirements and submit recommendations and plan for solution implementation with graphical representations.  
Delivered within 10 business days from contract execution.
3. Configure software to meet documented requirements and provide demonstration to CUD for acceptance.  
Delivered within\_\_\_\_days from contract execution.
4. Complete solution testing protocols according to deliverables in collaboration with CUD. Completion is determined by CUD acceptance.  
Delivered within\_\_\_\_days from contract execution.
5. Train CUD staff (see Training section, page 5) on all aspects of the solution.  
Delivered within\_\_\_\_days from contract execution.
6. Provide final written system documentation, including graphical representations, per the deliverables and contract negotiations and as accepted by ETS and CDR.
7. Delivered within\_\_\_\_\_days from contract execution.

### **8. Period of Performance**

Specify the period of performance in which the Vendor will conduct and complete the work associated with the SOW. (60-90 Days)

### **9. Invoices**

Payments will be made in accordance with Appendix A of the DIR DBITS Contract.

### **10.CUD/Vendor-Furnished Equipment and Work Space**

The Credit Union Department will provide the Vendor work space, web connectivity and any other equipment required to complete deliverables.

# Capital Improvement #1: **Sage Database Conversion**

## **11. Additional CUD Terms and Conditions**

Appendix A for Deliverables-Based Technology Services Contracts Standard Terms and Conditions (Ts and Cs)

### **11. Deliverables**

The deliverables required for each task in this project are defined within this section.

- Deliverables must be provided on the dates specified. Any changes to the delivery date must have prior approval (in writing) by the CUD contract manager or designate.
- All deliverables must be submitted in a format approved by the CUD contract manager.
- If the deliverable cannot be provided within the scheduled time frame, the Vendor is required to contact the CUD contract manager in writing with a reason for the delay and the proposed revised schedule. The request for a revised schedule must include the impact on related tasks and the overall project.
- A request for a revised schedule must be reviewed and approved by the CUD contract manager before placed in effect. Contract Terms and Conditions may dictate remedies, costs, and other actions based on the facts related to the request for a revised schedule.
- The CUD will complete a review of each submitted deliverable within specified working days for the date of receipt
- A kickoff meeting will be held at the Credit Union Department's Austin office at 914 East Anderson Lane Austin, TX 78754 at a time selected by the CUD where the Vendor and its staff will be introduced to the CUD.

### **12. Non-Functional Requirements Testing**

Functional testing

- Work with CUD Subject Matter Experts to create success and failure path test cases
- Tests will parallel the cooperatively planned acceptance tests
- Complete tests and report a list of tested functionality to CUD.

#### **b. Training**

- Provide user training
- Environment functionality and design must be within one-week of Production



## Capital Improvement #1: Sage Database Conversion

### c. Security

- Ensure the National Institute of Standards & Technology (NIST) 800-53
  - Security standards are fully implemented in the solution
  - Software solution must meet CUD's security standards (to be provided
    - by the Department)
  - Software solution must undergo CUD's security review
  - All aspects of the software solution must have role based permissions, including, but not limited to, the following:
    - Workflows
    - Data field permissions
    - Document permissions
    - Reports
  - Software solution must time-out after set-period of inactivity
  - Monitor and audit all actions within the following:
    - Web Portal
    - Document Repository
    - Provide "exception" log report capability
    - Exception tracking process workarounds
  - Ability for CUD to suspend web portal access by individual in the following ways:
    - Lock out automatically after a specified number of days
    - Lock out manually
    - Lock out user after a specified number of login attempts
- ❖ NOTE: Must adhere to DIR standard if there is one; otherwise after 5 attempts
- Web portal access must integrate with local Active Directory for user authentication
  - Ability for CUD to administer Portal, Passwords, Permissions, Resource links(training)
  - Create a method to identify data security levels for data fields and User Interface screens
    - Customizable
    - Able to auto-tag certain fields

### 13. Delivery Schedule

No.		Item	SOW Paragraph	Due Date	Recipient
1	Solution Design		5.1.6.1		
2	Landing Page		5.1.6.2		

## Capital Improvement #1: Sage Database Conversion

3	Database Record Access and Navigation		5.1.6.3		
4	Administrative Functions		5.1.6.4		
5	Documentation and Reporting		6.1.6.1.1		
6					
7					
8					

### 14. Vendor Response

- All written deliverables must be phrased in terms and language that can be easily understood by non-technical personnel (e.g., laypersons without subject matter expertise)
- All document deliverables must be in formats (hard copy and electronic) five (5) printed copies formatted in industry accepted standards (e.g., MS Word, MS PowerPoint, MS Project) and in a Compact Disk.
- The SOW Response must include a cover letter in the form of a standard business letter that provides an executive summary of the solution the Vendor plans to provide.
- The SOW Response must include a detailed plan that (1) addresses how work on the project will be performed; (2) includes the research, analyses, and methodologies to be used; and (3) a detailed description of each deliverable to be provided.
- The Vendor must demonstrate its knowledge and expertise of the methodologies and environment (e.g., platforms, software, applications, network, tools, etc.) for which work is to be performed
- All items of this agreement shall be done in accordance with the Statement of Work and the Requirements Specifications document provided by the CUD.
- Address for response submission - 914 East Anderson Lane Austin, TX 78754

#### a. Content

- Agreement to confidentiality and legal statements
- Vendor staff capabilities specific to this SOW:
  - Organization chart
  - Management team resumes
  - Key personnel resumes
  - Vendor's services capabilities:
  - Outline of capability to deliver the required services, including process, functional and technical expertise

## Capital Improvement #1: **Sage Database Conversion**

- Agreed-on SOW for deliverables-based services
- Project plans for project services or transition
- Project management plan addressing the tasks specified in the SOW

### **b. Pricing**

The main purpose of this section is to detail the pricing for the deliverables-based services. Vendors should also provide a summary of any assumptions and exclusions.

#### ***Pricing Sheet***

<b>Deliverable No.</b>	<b>Deliverable Name</b>	<b>Price</b>



## EXHIBIT B

### CAPITAL IMPROVEMENT FUNDING REQUEST

#### Capital Improvement #2: **Secured Data Transfer Portal** (Priority: 3)

SECURED DATA TRANSFER PORTAL	
Objects of Expense:	Estimated Costs
One-time Equipment Installation	\$2,530
On-going yearly cost for service and maintenance, hardware and software	\$23,000
DIR's on-going administrative cost (3%)	\$690
Increased bandwidth On-going increased cost (\$741/mo.)	\$8,895
Total	\$35,115

#### **Description/Justification:**

Funding of this initiative is necessary to build a Secure Data Transfer Portal that will enable the Department's examiners and credit unions to share examination-related documents. The solution will make it possible to provide file transfers, file access and file management over a reliable data stream.

The file sharing service establishes a secure and encrypted connection from the Department to DIR's Government Cloud (Amazon Web Services), allowing examiners and credit unions to access the files through a portal that has the look and feel of a locally hosted server. The Government Cloud will provide additional layers of security (aka Fed RAMP<sup>1</sup>) not provided with a Public Cloud solution. Leveraging two appliances located in the Department's server room, the examiners and credit unions will be connected to storage in a secure Government Cloud. Each credit union will have its own unique portal access and storage. This technology will enable the Department to accomplish data sharing while maintaining all information encrypted in-transit and at rest.

This service will make it possible to reduce the travel time required to conduct on-site examinations, as a material portion (i.e. approximately 30 percent or higher) of examinations could be conducted from the examiners' headquarters. Preliminary examination tasks could be performed remotely. Inversely, a credit union can post requested documents in the portal only to be accessed by the

<sup>1</sup> Fed Ramp: The Federal Risk and Authorization Management Program is an assessment and authorization process which U.S. federal agencies have been directed by the Office of Management and Budget to use to ensure security is in place when accessing cloud computing products and services.

examiner in charge. Reducing examiner travel time will translate into travel cost savings associated with mileage, meals and lodging; and should reduce turnover due to lower travel.

**External/Internal Factors:**

The Department will take advantage of a current Enterprise solution through an existing Department of Information Resources (DIR) and the Data Center Services contract with Cloud49. This solution assumes the Department will need some additional Network bandwidth to handle/manage the additional traffic between the Department and the Portal users (examiners and credit unions). The Department will send out an Invitation for Bid based on requirements that have been delineated in a Statement of Work document. Those three (3) vendors will be identified with the assistance from Department of Information Resources.

**Background:**

In late November 2016, the Department concluded a study for a solution that will allow for a secure document exchange with the Department's Examiners, the Credit Unions and the Austin office. The research for the right solution included consultation with the Department of Information Resources (DIR).

Because all the information that will be exchanged is highly confidential, it is recommended that the hosted solution is in a Government Cloud and the cloud services provider must be Fed Ramp certified.

Three cloud-based solution were considered:

Option One - Develop an in-house solution using SharePoint, which is part of the Office 365 Government Cloud license the Department already has in place. This solution was estimated to have a yearly cost of \$75,000 for an FTE's salary to support the application, not including benefits cost.

Option Two - A service through Box in use by the state of Washington. However, this solution does not currently offer the Government Cloud. This solution was estimated to have a yearly cost of \$43,000 for CUD's staff and one user per credit union and \$74,000 for multiple Credit Union users.

Option Three - A Remote File Service using a DIR's Cooperative Contracts vendor, Cloud 49. This is a hybrid solution in that the data is stored in a Networked Storage Device in the Department's data center and a cloud-based portal will allow the secured exchange of documents between the Department's staff. This solution was estimated to have a yearly cost of \$22,400 for up to 250 users and \$36,156 for up to 750 users (this would allow credentials to multiple

users at the Credit Unions). The service includes the Portal application, the storage infrastructure and backup solution.

The Department has decided to opt for the Cloud 49 solution offered through a DIR Cooperative Vendor Contract with Cloud 49. With this solution, DIR manages the vendor and the costs for the services are passed through DIR to the Department. With this solution, the Department will be part of the DCS Services provided by DIR and will have access to the Data Center Services Portal provided by ATOS.

The Secured Data Exchange using Cloud 49 will enable Department and Credit Union staff to securely share and exchange large files using their web browser. The person sending the files can send them via the web browser and the files will be stored on our secure storage devices for retrieval rather than being sent in an email. Individuals receiving the files will get security credentials and will be instructed on how to either retrieve documents or place documents in their respective repository. The data will always be encrypted at rest and in transit and will only be decrypted when accessed by the authorized staff.

Cloud49 utilizes a strategic partnership with Amazon Web Services (AWS) to provide the cloud infrastructure for the Department's solution. AWS offers 99.95% uptime for its compute and storage infrastructure. Cloud49 exclusively utilizes US based AWS data centers and US based technical resources in its offerings.

Through the partnership with AWS, Cloud49 offers the following security certifications on its Cloud infrastructure:

SOC 1 – Are required controls in place at a service organization relevant to user entities internal control over financial reporting.

SOC 2 – Are controls in place at a service organization relevant to security, availability, processing integrity confidentiality, or privacy.

SOC 3 – Are controls in place at a service organization relevant to security, availability, processing integrity, confidentiality, or privacy

ISO 27001 - Is the international standard for Information Security Systems. It provides a model for risk assessment, security design and implementation, and security management. The ISO 27001 standard specifies implementation and management guidelines to help keep digital and paper information safe.

#### **Core Network Upgrade and Increase Of Bandwidth:**

The network is the Department's workhorse. Thus, when network equipment has aged to near the end of its useful life, it is imperative that



we update core network components. Presently, we have four major components of our network which have aged with no ongoing support contracts in place. Due to cost considerations, it is our strategy to take a phased approach, in which we will upgrade a small portion of the network every year. A phased approach is a cost-effective way of keeping the network stable and up to date, while spreading the cost over multiple years.

The agency will be upgrading one of its two host application servers (hardware) during fiscal year 2017 and our other server will be replaced in fiscal year 2018. The new servers will provide us the ability to take advantage of increased LAN speeds (bandwidth), resulting in improved performance that will result in faster access to applications and increased worker productivity. Our plan is to upgrade the LAN/WAN speed from 20 megabits per second to 50 megabits per second, which in turn will allow us to take advantage of the new servers' speeds.

The need to increase LAN/WAN speeds is due to the deployment of several new applications in recent years (VoIP telephones in 2014 and Office 365 in 2015; increased SharePoint usage in 2016), as well as several new bandwidth-intensive, cloud-based initiatives. Those initiatives include a secure data exchange portal and the replacement for the Sage system, which will need a secured, fast, reliable network with good quality of service.

The Department also requires additional bandwidth for its voice, video and data needs, including plans to conduct examiner conferences in the Austin office, update iPhones and the transition from desktops to laptops. Having laptops in the office will enable the users to use their computers in places other than their own office or cubicle. For example, they can move a meeting to the conference room and use their laptop to run a PowerPoint presentation.

The agency also needs to upgrade its Wi-Fi network capabilities to provide more secured connections that will facilitate access to Office365, iPhones and the internet whenever examiners work from the Austin office. We will need to purchase an enterprise-class 802.11ac (wireless networking standard) wireless access point that replaces the agency's existing consumer-grade Wi-Fi access point.

Upgrading the core network and increasing the bandwidth will also position the Department to adopt future system virtualization, additional Software as a Service (SaaS) options or Cloud Services to meet the needs of the agency.

## **ACCESS TO THE CUD BUILDING**

### **E. (j) Discussion, Consideration, and Possible Vote to Take Action on the Staff Proposal to Manage and Control Access to the Credit Union Department Building During Normal Business Hours.**

**BACKGROUND:** The safety and security of the Department's physical space and assets is a shared responsibility of all staff members. To meet this obligation, the Department would like to implement stronger security measures during business hours to better ensure that the Credit Union Department Building is accessed only for authorized purposes.

More specifically, the Department seeks authority to govern conditions of access to the building during normal business hours in order to maintain the integrity and security of the building, to protect the confidentiality of information stored in the building, and to protect staff who work within the building. As delineated in the following draft policy, with few exceptions, such as open meetings of the Commission, it is proposed that permission for entry into the building would be strictly controlled to provide for only the amount of access necessary to carry out the functions of government.

**RECOMMENDED ACTION:** The Department recommends that the Commission authorize the commissioner to reasonably constrain public access to the building during normal business hours.

**RECOMMENDED MOTION:** I move that the Commission allow the commissioner to reasonably manage and control access to the Credit Union Department Building in a manner which minimizes risks to personal safety and maximizes physical asset and confidential information protection.



# CREDIT UNION DEPARTMENT POLICY

*Policy #*

*July --, 2017*

## **Building Access**

### **Purpose**

The purpose of this policy is to govern conditions of access to Department facilities both during and after normal business hours in order to maintain the integrity and security of the facilities, to protect the confidentiality of information stored in the facilities, to protect the public who use the facilities, and to protect staff who work within the facilities.

### **Policy Statement**

It is the policy of the Department to manage and control access to the Credit Union Department Building (Building) to enhance safety and security, while maintaining compliance with applicable laws. With few exceptions such as open meetings of the Commission, permissions for entry will be strictly controlled to provide for only the amount of access necessary to carry out the functions of government.

### **Visitors**

Generally, all visitors to the Department may gain entry to the Building via an intercom system at the main entrance. Once identified, authorized visitors will be permitted entry to the Building.

All visitors must complete the sign-in register located near the front desk upon entering the main offices of the Department.

### **Meetings of the Commission**

The Department will preserve an open access environment for the conference room and restroom areas of the Building during any "open meetings" of the Commission. Visitors will be allowed unobstructed access to the conference room; however access to the main offices of the Department will generally be restricted to staff, Commission Members, and invited guests. The main office door shall be closed and the back door leading to the restroom area hallway locked during any such meeting. Only those visitors entering the main offices of the Department will be required to complete the sign in register.

### **Guest**

Staff members are responsible for all person who visit them whether for business or personal reasons. Staff must provide an appropriate level of supervision of guest so that security requirements are maintained. While it is not necessary for a staff member to accompany a guest continuously, the staff member must ensure the guest does not inadvertently compromise security or disrupt essential services. For example, it is not necessary to accompany a guest to the rest room, but the guest must be supervised



while in the computer room, and escorted to and from the Building exit.

### **Standard Access Hours to the Building**

Generally, routine access to the Building required for the performance of a staff member's assigned duties will be provided through the granting of electronic access Monday through Friday between the hours of 6:00 a.m. and 6:00 p.m. (authorized time of access). During other times, including designated holidays, the office will be deemed closed and a staff member must receive specific authorization to gain entry the Building.

### **Access Credential Devices**

An access credential device (ACD) is a Department-approved device which identifies an individual to the Department's access control system. Request for an ACD must follow established authorization protocol. The issuance of an ACD does not extend permission of access outside the authorized times of access. All ACDs are the property of the Department and as such they are not transferable and must be returned upon the request of the commissioner or termination of employment.

### **Lost, Stolen, Misplaced, and Damaged ACDs**

Lost, stolen, or misplaced ACDs must be reported the Staff Services Officer as soon as the loss is discovered, so that the card may be deactivated from the access control system. Failure to notify the Staff Services Officer in a timely manner could result in a breach of building security through the use of the misplaced ACD.

The Staff Services Office will produce a management report detailing all ACDs which are replaced, the ACD holder name, and the reason for replacement. Senior management will assess the vulnerability of the Building compromised by the lost ACD, and determine whether there needs to be a new access system installed.

### **Areas of Building Required a Higher Level of Security**

Access authorization for the computer room is granted and administered by the Director of Information Technology.

### **Accountability**

Although the Department has an access control system to prevent unauthorized access, every staff member must take responsibility to ensure building security as well. Staff members must not compromise building security by propping doors open or holding a door open to let an unknown person in the building. Taking such actions lessens building security and increases the risk to every staff member. Staff members should feel empowered to challenge any unfamiliar person in the main offices of the Building. Staff members must also report to their supervisor any security irregularities such as doors left open.

### **Penalties for Violation of this Policy**

It is a violation of Department policy to permit unauthorized individuals to enter into the Building by deliberately disengaging, deactivating, or otherwise circumventing locking devices or other security measures intended to control building access. Persons who violate this policy are subject to disciplinary action in accordance with relevant Department discipline policy.

## **Audits**

Annually, the Staff Services Officer shall conduct a “self-audit” by taking inventory of all ACDs, and clearance “issuance records”, along with those devices physically “on hand” and comparing those counts to the central database records maintained for those items. A written report of the results of this self-audit shall be created, affirming the accuracy of the inventory taken as well as documentation of any discrepancies between the physical count and central database records. This report shall be provided to the Director of Information Technology.

DRAFT

**PILOT PROJECT WITH THE NATIONAL CREDIT UNION  
ADMINISTRATION**

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

**BACKGROUND:** As the Department continues efforts to evaluate alternatives to its current examination approach, it is critically important for the Department to work closely with NCUA to develop a mutually acceptable vision of the next generation of shared supervision with respect to federally-insured credit unions. As the Department begins to explore these matters with NCUA, it is becoming increasingly apparent that some of the guidance and/or the Commission's expressed expectations related to the examination of federally-insured credit unions may impede meaningful negotiations about future supervisory activities. Although the commissioner has statutory authority to enter into cooperative or coordinating agreements with the NCUA, the Department is proactively seeking approval to explore any and all options on a test-basis, including those that may not be fully consistent with previous directions.

It is important to note that a pilot project may need to run for an extended period of time in order to gather sufficient data to make a reasoned decision about permanent implementation. In those situations, however, the Department would provide the Commission with periodic updates on the activities and the initial findings.

**RECOMMENDED ACTION:** The Department recommends that the Commission provide its consent for the commissioner to test options for the next generation of shared supervision with NCUA.

**RECOMMENDED MOTION:** I move that the Commission allow the commissioner to negotiate and participate in alternative joint supervision pilot projects with the NCUA.



## **RESOLUTIONS OF APPRECIATION**

**E. (l) Discussion, Consideration, and Possible Vote to Take Action to Approve Resolutions of Appreciation for Outgoing Commission Members Manuel Cavazos and Gary Tuma.**

**BACKGROUND:** In accordance with Section VII of the Commission's Policies Manual, the Commission shall adopt a resolution of appreciation to recognize the service of members upon the completion of their term of office. Accordingly, Staff has drafted the attached resolutions for your consideration.

**RECOMMENDED MOTION:** I move that we approve the Resolutions of Appreciation for Outgoing Commission Members Manuel Cavazos and Gary Tuma as presented and that a copy of the appropriate resolutions be given to them as a token of our appreciation.



## RESOLUTION

The Credit Union Commission, State of Texas, hereby publicly proclaims its appreciation for devoted service performed in the interest of Texas credit unions and the people of Texas by

### **MANUEL "MANNY" CAVAZOS**

**WHEREAS**, on May 26, 2006, Governor Rick Perry appointed Manuel "Manny" Cavazos of Austin, Texas to the Credit Union Commission; and

**WHEREAS**, Manuel "Manny" Cavazos served as a Public Member of the Commission with honor and distinction through May 20, 2017; and

**WHEREAS**, he has with great competence served as Chairman of the Commission from March 28, 2013 through April 24, 2017; and

**WHEREAS**, as a Commission Member, he dedicated his time and energies working to assure that the Commission and the Credit Union Department fulfilled their responsibilities while remaining sensitive to the needs of Texas credit unions and their members; and

**WHEREAS**, Manuel "Manny" Cavazos has been diligent in his duty as a member of the Commission providing worthy leadership and guidance to the Credit Union Department.

**NOW THEREFORE, BE IT RESOLVED**, that the Credit Union Commission expresses its sincere appreciation for the leadership that Manuel "Manny" Cavazos provided during his tenure as a Commission member; and

**BE IT FURTHER RESOLVED**, that this Resolution be conveyed to Manuel "Manny" Cavazos as a token of the Commission's gratitude, and entered in the minutes of the Commission's meeting.

**READ, ADOPTED, AND APPROVED**, unanimously by the Credit Union Commission, State of Texas, this fourteenth day of July 2017.



## **RESOLUTION**

The Credit Union Commission, State of Texas, hereby publicly proclaims its appreciation for devoted service performed in the interest of Texas credit unions and the people of Texas by

### **GARY D. TUMA**

**WHEREAS**, on April 13, 2011, Governor Rick Perry appointed Gary D. Tuma of Sugar Land, Texas to the Credit Union Commission; and

**WHEREAS**, Gary D. Tuma served as a Industry Member of the Commission with honor and distinction through May 20, 2017; and

**WHEREAS**, as a Commission Member, he dedicated his time and energies working to assure that the Commission and the Credit Union Department fulfilled their responsibilities while remaining sensitive to the needs of Texas credit unions and their members; and

**WHEREAS**, Gary D. Tuma has been diligent in his duty as a member of the Commission providing worthy leadership and guidance to the Credit Union Department.

**NOW THEREFORE, BE IT RESOLVED**, that the Credit Union Commission expresses its sincere appreciation for the leadership that Gary D. Tuma provided during his tenure as a Commission member; and

**BE IT FURTHER RESOLVED**, that this Resolution be conveyed to Gary D. Tuma as a token of the Commission's gratitude, and entered in the minutes of the Commission's meeting.

**READ, ADOPTED, AND APPROVED**, unanimously by the Credit Union Commission, State of Texas, this fourteenth day of July 2017.

## **COMMITTEE APPOINTMENTS**

### **E. (m) Discussion and Consideration of the Chair's Designation of a Vice Chair and Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation).**

**BACKGROUND:** As required by Commission Policy, the Chair must designate a Vice Chair and appoint members to those committees established by the Commission.

#### **➤ Vice-Chair.**

The vice-chair serves at the will of the Chair and performs the duties of the presiding officer in the event of an absence or disability.

Currently, the Commission has two standing committees:

#### **➤ Commissioner Evaluation Committee**

The Commission Chair shall appoint a Commissioner Evaluation Committee of at least three members, and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.

The purpose of the Committee shall be to coordinate the annual evaluation of the Commissioner's performance and to oversee the development and maintenance of a Commissioner succession plan.

#### **➤ Rules Committee**

The Commission Chair shall appoint a Rules Committee of at least three members, and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.

The purpose of the Committee is to conduct thorough deliberations and scrutiny of proposed rulemaking and assigned projects, and to bring to the Commission the results of its deliberations and its recommendation for Commission action.

**NOTE:** Without objection, the minutes of the meeting will reflect the Chair's designation of a Vice Chair and her appointments to the Rules and Commissioner Evaluation Committees as presented.

***CREDIT UNION DEPARTMENT***

***INDUSTRY STATUS***

***AND***

***DEPARTMENTAL OPERATION***

**AFFIRMATIVE ACTION/EEO QUARTERLY REPORT**  
**2nd Quarter - FISCAL YEAR 2017**

**2/28/2017**

During this fiscal year the Department is authorized to have 29.5 employees.

			White		Black		Hispanic		Asian		Total
			Male	Female	Male	Female	Male	Female	Male	Female	
No. of Employees on		1st quarter	11	5	1	4	0	4	3	0	28
Resignations (retirees)			0	2	0	0	0	1	0	0	3
New Hires			0	0	1	0	0	1	0	0	2
No. of Employees on		2nd quarter	11	3	2	4	0	4	3	0	27
Resignations (retirees)			0	0	0	0	0	0	0	0	0
New Hires --			0	0	0	0	1	1	0	0	2
Grand Total of Employees			11	3	2	4	1	5	3	0	29
Promotions -2nd Quarter			0	0	0	0	0	0	0	0	0

Percent Male 58.62%  
Percent Female 41.38%

**Salary Breakdown**

	1st quarter	2nd quarter	Average Tenure
Average of Salaries	\$ 77,286	\$ 76,499	97.8 months
Average Salaries - White	\$ 87,146	\$ 87,951	122.0 months
Male 11	\$ 96,831	\$ 96,831	146.9 months
Female 5	\$ 65,838	\$ 55,392	30.6 months
Average Salaries - Black	\$ 77,286	\$ 71,829	73.4 months
Male 2	\$ 65,002	\$ 65,002	34.8 months
Female 3	\$ 65,498	\$ 71,361	99.9 months
Average Salaries - Hispanic	\$ 51,840	\$ 54,869	144.3 months
Male 1	\$ -	\$ 101,020	10.8 months
Female 4	\$ 51,840	\$ 55,156	144.3 months
Average Salaries - Asian	\$ 60,422	\$ 64,963	76.4 months
Male 3	\$ 60,422	\$ 64,963	76.4 months
Female 0	\$ -	\$ -	0.0 months
29			

<b>Exmr. Experience -</b>	<b>2nd quarter</b>		
Less than 1 year	5	Average Salary	\$ 51,440
1 - 2 years	7	Average Salary	\$ 56,515
2 - 5 years	3	Average Salary	\$ 66,232
5 - 10 years	0	Average Salary	
Over 10 years	6	Average Salary	\$ 102,283
Total	21	Average Salary	\$ 63,753



# AFFIRMATIVE ACTIONED/EEO QUARTERLY REPORT

3rd Quarter - FISCAL YEAR 2017

5/31/2017

During this fiscal year the Department is authorized to have 29.5 employees.

			White		Black		Hispanic		Asian		Total
			Male	Female	Male	Female	Male	Female	Male	Female	
No. of Employees on		2nd quarter	11	3	2	4	0	4	3	0	27
Resignations (retirees)			0	0	0	0	0	0	0	0	0
New Hires			0	0	0	0	1	1	0	0	2
No. of Employees on		3rd quarter	11	3	2	4	1	5	3	0	29
Resignations (retirees)			0	0	0	0	0	0	0	0	0
New Hires --			0	0	0	0	0	0	0	0	0
Grand Total of Employees			11	3	2	4	1	5	3	0	29
Promotions - 3rd Quarter			1	0	0	0	0	1		0	2

Percent Male 58.62%  
Percent Female 41.38%

## Salary Breakdown

	2nd Qtr	3rd Qtr	Average Tenure
Average of Salaries	\$ 76,499	\$ 77,056	100.8 months
Average Salaries - White	\$ 87,951	\$ 88,469	125.0 months
Male	11 \$ 96,831	\$ 97,255	150.0 months
Female	3 \$ 55,392	\$ 56,256	33.6 months
Average Salaries - Black	\$ 69,241	\$ 69,241	76.4 months
Male	2 \$ 65,002	\$ 65,002	37.8 months
Female	4 \$ 71,361	\$ 71,361	102.9 months
Average Salaries - Hispanic	\$ 54,869	\$ 57,102	147.3 months
Male	1 \$ 101,020	\$ 101,020	13.8 months
Female	5 \$ 55,156	\$ 56,942	147.3 months
Average Salaries - Asian	\$ 64,963	\$ 64,963	79.4 months
Male	3 \$ 64,963	\$ 64,963	79.4 months
Female	0 \$ -	\$ -	0.0 months
	29		

Exmr. Experience -	3rd quarter		
Less than 1 year	2	Average Salary	\$ 49,985
1 - 2 years	6	Average Salary	\$ 56,304
2 - 5 years	5	Average Salary	\$ 61,271
5 - 10 years	0	Average Salary	
Over 10 years	6	Average Salary	\$ 101,056
Total	19	Average Salary	\$ 76,395

# Credit Union Department

## Executive Summary

As of 05/31/17

\*Information from call report cycle

ACTIVITY	YTD 2015	YTD 2016	2017 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MOVEMENT PROFILE							
Number of CUs	185	184	185	184	186		
Total Assets (Millions)	*33,540	*35,882	*36,399	*36,782	*39,137		
APPLICATIONS (Received)							
Charters	0	0	0	0	0		0
Foreign Branches	0	0	0	0	0		0
Conversions	0	4	1	0	0		1
Mergers	9	2	1	1	0		2
Bylaws	60	45	20	16	13		49
Articles of Incorporation	2	1	1	0	0		1
Total	71	52	23	17	13	0	53
EXAMINATION ACTIVITIES							
Regular	81	104	31	29	32		92
Joint	75	62	12	9	21		42
Remedial	35	37	9	5	9		23
Total	191	203	52	43	62	0	157
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	5	2	2	2	1		
LUAs	0	0	0	0	0		
Cease & Desist Orders	2	1	1	1	3		
Dividend Restrictions	0	0	0	0	0		
Conservatorships	1	0	0	0	0		
Liquidations	2	2	1	1	1		
Total	10	5	4	4	5	0	
PERSONNEL STAFFING							
Field Examiners	14	18	18	19	19		
Total Personnel	24	28	27	29	29		
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	3,329	3,701	962	967	973	0	2,902
Actual Expenditures	3,006	3,476	884	906	913	0	2,703
Gifts and Bequests	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Actual Revenue	3,452	3,263	2,045	22	1,637	0	3,704

Credit Union Department  
Application Activities - Detail

ACTIVITY	4th Qtr 2015	4th Qtr 2016	2017 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
CHARTERS							
Pending at Beginning of Period	0	0	0	0	0		
Add: New Applications Filed	0	0	0	0	0		
Less: Approved	0	0	0	0	0		
Denied/Withdrawn	0	0	0	0	0		
Pending at End of Period	0	0	0	0	0	#####	
FOREIGN BRANCH OFFICES							
Pending at Beginning of Period	0	0	0	0	0		
Add: New Applications Filed	0	0	0	0	0		
Less: Approved	0	0	0	0	0		
Denied/Withdrawn	0	0	0	0	0		
Pending at End of Period	0	0	0	0	0	#####	
CONVERSIONS							
Pending at Beginning of Period	1	2	3	3	1		
Add: Applications Filed	0	1	1	0	0		
Less: Approved	1	0	1	2	0		
Denied/Withdrawn	0	0	0	0	0		
Pending at End of Period	0	3	3	1	1	#####	
MERGERS							
Pending at Beginning of Period	3	1	1	1	1		
Add: Applications Filed	1	0	0	1	0		
Less: Approved	2	0	0	1	0		
Denied/Withdrawn	0	0	0	0	0		
Pending at End of Period	2	1	1	1	1	#####	
BYLAWS							
Pending at Beginning of Period	4	4	6	9	12		
Add: Applications Filed	17	11	20	16	13		
Less: Approved	11	9	17	13	15		
Denied/Withdrawn	0	0	0	0	1		
Pending at End of Period	10	6	9	12	9	#####	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	1	0	0	0	0		
Add: Applications Filed	0	0	1	0	0		
Less: Approved	1	0	1	0	0		
Denied/Withdrawn	0	0	0	0	0		
Pending at End of Period	0	0	0	0	0	#####	



Credit Union Department  
Movement Profile - Condition Summary

CAMEL RATING	4th Qtr 2015	4th Qtr 2016	2017 FISCAL YEAR				
			*1st Qtr	*2nd Qtr	*3rd Qtr	*4th Qtr	
1	27	34	40	43	42		
2	126	125	123	123	122		
3	28	22	18	16	19		
4	4	3	4	4	3		
5	0	0	0	0	0		
<b>Total</b>	185	184	185	186	186	#VALUE!	

\* Information from exam master list

Texas Credit Union Department  
Enforcement Actions - Detail

TYPE OF ACTION	In Force 8/31/2015	Issued	Activity Terminated	In Force 8/31/2016	Issued	Activity Terminated	In Force 05/31/2017
Determination Letters	5	2	5	2	0	1	1
LUAs	0	0	0	0	0	0	0
Cease & Desist Orders	2	1	2	1	2	1	3
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	1	0	1	0	0	0	0
Liquidations	2	0	0	2	0	0	1
<b>Total</b>	10	3	8	5	2	2	5

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	74	32	128%	17%	100%
Joint	37	21	175%	11%	100%
Remedial	24	9	113%	5%	100%
<b>Total</b>	135	62	138%	35%	100%

**Credit Union Department**  
**Movement Profile - Consumer Complaints**

CONSUMER COMPLAINTS	YTD 2015	YTD 2016	2017 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
Received	264	261	76	60	77		213
Closed	253	265	77	60	79		216
Avg. Days to Process	13	14	12	13	14		13
% Resolved in 45 Days	98%	99%	100%	100%	100%		100%

**Texas Credit Union Department**  
**Consumer Complaint - Detail**

TYPES OF COMPLAINTS	YTD 2015	YTD 2016	2017 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
LOAN ISSUES							
Collections/Loans	21	16	3	2	6		11
Procedure Irregularity	21	17	3	1			4
Denial	0	0	0	0			0
Cross Collateralization	3	3	0	0			0
Credit Report Issues	16	24	14	10	11		35
Collateral Protection Insurance	8	5	3	2			5
ACCOUNT ISSUES							
NSF/Overdraft	0	0	0	0			0
Electronic Funds Transfer	15	14	7	1	2		10
Holds on Checks	6	6	0	2	1		3
Posting Order	3	1	1	1	2		4
Fraud/Unauthorized	22	25	9	7	8		24
Fees	33	29	8	8	16		32
Billing Disputes	5	5	4	5			9
Other	20	30	13	6	16		35
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	26	33	6	5	6		17
Account Closed/Frozen	18	16	1	3	5		9
Customer Service	32	34	3	6	4		13
Deceptive Advertisement	1	2	0	0			0
Vehicle Title	2	4	1	1	2		4
Website Issues	1	1	0	0			0
TOTAL	253	265	76	60	79	0	215

Credit Union Department  
Merger/Conversion Finalized

ACTIVITY	YTD 2015	YTD 2016	2017 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MERGERS							
Number:							
State-to-State	2	2	0	1			1
Federal-to-State	3	1	0	0			0
State-to-Federal	0	0	0	0			0
Total	5	3	0	1	0	0	1
Assets:							
State-to-State	49,143,057		0	2,945,999			2,945,999
Federal-to-State	20,820,734	43,448,790	0	-			0
State-to-Federal	-	-	0	0			0
Total	69,963,791	43,448,790	0	2,945,999	0	0	2,945,999
CONVERSIONS							
Number:							
Federal-to-State	1	1	1	2			3
State-to-Federal	0	0	0	0			0
State-to-Mutual Bank	0	0	0	0			0
Assets:							
Federal-to-State	331,371,403	161,809,958	245,379,241	1,153,968,101	0	0	1,399,347,342
State-to-Federal	-		0				
State-to-Mutual Bank			0				
Total	331,371,403	161,809,958	245,379,241	1,153,968,101	0	0	1,399,347,342



**Credit Union Department**  
**Web Site Statistics**  
**Report Range: 09/01/16 thru 05/31/17**

		<b>Number</b>
<b>Total Visits:</b>		
	<b>Number of Visits</b>	17,868
	<b>Visitors</b>	9,576
	<b>Page Views</b>	41,994
	<b>Number of Repeat Visitors</b>	8,623
	<b>Average Pages per Visit</b>	2.35
	<b>Average Visit Duration</b>	0:02:43
<b>Most Requested Pages:</b>		
	<b>Home</b>	16,107
	<b>Texas Rules for Credit Unions</b>	2,913
	<b>Job Postings</b>	2,651
	<b>Newsletters</b>	2,031
	<b>Employment</b>	1,738
<b>Most Downloaded Files:</b>		
	<b>Complaint Form</b>	1,860
	<b>Rules for Credit Unions</b>	1,009
	<b>Adop97.200 (Employee Training Program)</b>	865
	<b>Rules for Credit Unions</b>	749
	<b>Hurricane Season 2016</b>	733

**Credit Union Department**  
**Quarter Assessment of HUB Related Activities**  
**May 31, 2017**

PROCUREMENT CATEGORY	GOAL	QTR	YTD
		PERFORMANCE	PERFORMANCE
Heavy Construction	11.2%	*	*
Building Construction	21.1%	*	*
Special Trade Construction	32.9%	0%	0%
Professional Services	23.7%	0%	0%
Other Services	26.0%	62.7%	47.8%
Commodities	21.1%	70.5%	66.5%

\* This goal is generally not applicable to the Department

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)	(FWO)			
Total Expenditure During this Quarter							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	394.88		8,000.00		8,830.00	10,234.47	17,224.88
Commodities	57.43	4,261.80			802.03	2,145.55	5,121.26
<b>Total</b>	<b>\$452.31</b>	<b>\$4,261.80</b>	<b>\$8,000.00</b>	<b>\$0</b>	<b>\$9,632.03</b>	<b>\$12,380.02</b>	<b>\$22,346.14</b>

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)	(FWO)			
Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized this Quarter							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	1		1		1	10	3
Commodities	1	2			4	10	7

**Credit Union Department**  
**Year to Date Assessment of HUB Related Activities**  
**May 31, 2017**

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)		(FWO)		
Total Expenditure YTD							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	986.88		10,000.00		18,311.25	31,934.67	29,298.13
Commodities	174.43	7,624.80			5,955.60	6,919.51	13,754.83
<b>Total</b>	<b>\$1,161.31</b>	<b>\$7,624.80</b>	<b>\$10,000.00</b>	<b>\$0</b>	<b>\$24,266.85</b>	<b>\$38,854.18</b>	<b>\$43,052.96</b>

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)		(FWO)		
Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized YTD							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	1		1		2	18	4
Commodities	2	4			10	13	16

African American (MBL, FBL)  
Asian American (MAS, FAS)  
Hispanic American (MHI, FHI)  
Native American  
Non-Minority Woman (FWO)

**Credit Union Department**  
**Quarter Assessment of HUB Related Activities**  
**February 28, 2017**

PROCUREMENT CATEGORY	GOAL	QTR	YTD
		PERFORMANCE	PERFORMANCE
Heavy Construction	11.2%	*	*
Building Construction	21.1%	*	*
Special Trade Construction	32.9%	0%	0%
Professional Services	23.7%	0%	0%
Other Services	26.0%	49.4%	35.7%
Commodities	21.1%	74.9%	64.4%

\* This goal is generally not applicable to the Department

(MBL, FBL)		(MAS, FAS)		(MHI, FHI)		(FWO)	
Total Expenditure During this Quarter							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services			2,000.00		4,853.82	6,833.20	6,853.82
Commodities		2,956.00			2,096.57	1,688.96	5,052.57
Total	\$0	\$2,956.00	\$2,000.00	\$0	\$6,950.39	\$8,522.16	\$11,906.39

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)	(FWO)			
Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized this Quarter							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services			1		2	9	3
Commodities		1			4	5	5



**Credit Union Department**  
**Year to Date Assessment of HUB Related Activities**  
**February 28, 2017**

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)		(FWO)		
Total Expenditure YTD							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	592.00		2,000.00		\$9,481.25	21,700.20	12,073.25
Commodities	117.00	3,363.00			5,153.57	4,773.96	8,633.57
<b>Total</b>	<b>\$709.00</b>	<b>\$3,363.00</b>	<b>\$2,000.00</b>	<b>\$0</b>	<b>\$14,634.82</b>	<b>\$26,474.16</b>	<b>\$20,706.82</b>

	(MBL, FBL)	(MAS, FAS)	(MHI, FHI)		(FWO)		
Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized YTD							
PROCUREMENT CATEGORY	AFRICAN AMERICAN	ASIAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN	NON-MINORITY WOMAN	NON HUB	HUB TOTAL
Heavy Construction							
Building Construction							
Special Trade Construction							
Professional Services							
Other Services	1		1		2	6	4
Commodities	2	2			5	1	9

African American (MBL, FBL)  
Asian American (MAS, FAS)  
Hispanic American (MHI, FHI)  
Native American  
Non-Minority Woman (FWO)

**Monthly Survey Results**  
**Examinations**  
**January, 2017 thru May, 2017**

Reflects summary responses from 46 surveys received or 3 % of the 139 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. The lead-time was sufficient to gather the information requested prior to the on-site examination.	42	2		2		
Q 2. The pre-examination requests were reasonable in scope.	43	3				
Q 3. Materials requested in the pre-examination were used during the examination.	43	3				
Q 4. The pre-examination request made the examination run more efficiently.	45	1				
Q 5. The examiners were knowledgeable about your credit union.	40	6				
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	41	5				
Q 7. The examiners were responsive to your questions and concerns.	45	1				
Q 8. The examiners communicated effectively with the credit union throughout the examination.	44	2				
Q 9. The examiners treated you professionally.	46					
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	46					
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	46					
Q 12. Management was given the opportunity to react to the examination findings.	41	3	1			1
Q 13. The examination was completed within a reasonable timeframe.	44	1				1
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	46					
Q 15. The report was easy to understand.	46					
Q 16. The report accurately portrayed your credit union's practices and condition.	37	9				
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	42	4				
Q 18. The report contained useful recommendations for improving safety and soundness practices.	40	6				



### Examinations (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 19. The examination findings will assist you in enhancing your safety and soundness practices.	39	6	1			
Q 20. The examination was conducted in a fair and objective manner.	43	3				

### Applications

Reflects summary responses from 12 surveys received or 4 % of the 33 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. Department staff provided timely and accurate feedback/answers.	11	1				
Q 2. Department staff communicated with me in a courteous and professional manner.	11	1				
Q 3. The application process was efficient.	10	2				
Q 4. The Department's requests for information were reasonable.	10	2				
Q 5. The Department's website was helpful in completing my application.	10	2				

### Complaints

Reflects summary responses from 17 surveys received or 1 % of the 136 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. It was relatively easy to file a complaint with the Department.	9	3	1	3	1	
Q 2. Department staff communicated with me in a courteous and professional manner.	12		2	2	1	
Q 3. I believe Department staff understood the basis of my complaint.	10	1		3	3	

## Complaints (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 4. The response provided by the Department addressed the important aspects of my complaint.	9			2	6	
Q 5. The explanation give was fair considering applicable laws.	9		1	1	6	
Q 6. The Department website was helpful in the complaint process.	7	4	4		2	