CREDIT UNION COMMISSION

Rules Committee Meeting

Credit Union Department Building
914 East Anderson Lane
Austin, Texas

Thursday, November 2, 2017
2:00 p.m.

AGENDA

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

Adjournment

Note: This is a meeting of the Rules Committee of the Credit Union Commission. Because a quorum of the Credit Union Commission may attend this meeting of the Rules Committee, it is being posted, simultaneously, 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 Michelle Archie, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752--(512) 837-9236, as far in advance of the meeting as possible.

CALL TO ORDER

CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- *Kay Stewart, Chair*
- *Yusuf Farran, Vice Chair*
- *Steven "Steve" Gilman*
- *Rick Ybarra*
- *Allyson "Missy" Morrow, Ex-Officio*

Legal Counsel

- *Melissa Juarez*

Staff

- *Harold E. Feeney*
- *Isabel Velasquez*

FUTURE COMMITTEE MEETING DATES

The committee meets on an "as needed" or "subject to the call of the chair" schedule. If a meeting is necessary, it would normally be held the day before a regularly scheduled commission meeting.

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on July 7, 2016, is located under ***TAB B***.

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

RECOMMENDED MOTION: I move that the minutes of the Committee's July 7, 2016, meeting be approved as presented.

RULES COMMITTEE
MEETING MINUTES
JULY 7, 2016

A. CALL TO ORDER – Chairman Vik Vad called the meeting to order at 1:01 p.m. in the conference room of the Credit Union Department Building, Austin, Texas pursuant to Chapter 551 of the Government Code. Other members present included Kay Stewart, Yusuf Farran, Steven "Steve" Gilman, and Gary Tuma. Commission Chairman Manny Cavazos, ex-officio member was absent. Assistant Attorney General Melissa Juarez was in attendance to serve as legal counsel. Staff members in attendance were Harold E. Feeney, Commissioner and Shari Shivers, Assistant Commissioner and General Counsel. Chairman Vad appointed Isabel Velasquez as recording secretary. The Chair also inquired and the Commissioner confirmed that the notice of the meeting was properly posted **(June 23, 2016, TRD#2016004287).**

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION**–Chairman Vad invited public input on matters regarding rulemaking for future consideration by the committee. There was none.

B. RECEIVE MINUTES OF PREVIOUS MEETING (March 3, 2016)

Mr. Tuma moved to approve the minutes of March 3, 2016 as presented. Mrs. Stewart seconded the motion, and the motion was unanimously adopted.

C. UNFINISHED BUSINESS

(a) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 91.301 Concerning Field of Membership. Commissioner Feeney

explained that four written comments were received during the comment period, which ended on April 18, 2016. He indicated that two Texas banking trade associations expressed opposition to the amendments and a credit union and the Texas Credit Union Association indicated general support for the proposal. He noted that the lone credit union commenter, however, did express concern about certain aspects of the proposal and provided suggestions on ways to improve specific provisions of the proposal.

Commissioner Feeney pointed out that the proposal would establish that political subdivisions within reasonable proximity of the location of a credit union's office(s) as a presumptive "local service area". He suggested that the amendments would also more fully implement the intent of HB 1626 by facilitating the establishment of branches in geographic areas where there is a demonstrated need for credit union services.

After carefully review and consideration of the comments, Mrs. Stewart moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.301** as previously published in the *Texas Register*. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 97.200 Concerning the Employee Training Program. Commissioner Feeney indicated that the proposal revises the rule to conform to statutory changes made by Section 3 of H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. The proposed amendment reflects the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher

education. He further noted that the Commission received no comments on the proposed amendments.

After a brief discussion, Mr. Gilman moved to recommend that the Commission adopt the proposed amendments to **7 TAC Section 97.200** as previously published in the *Texas Register*. Mr. Tuma seconded the motion and the motion was unanimously adopted.

D. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Section 91.7000 Concerning Certificates of Indebtedness. Commissioner Feeney briefly explained that in accordance with the Commission's Rule Review Plan, staff had reviewed 7 TAC Section 91.7000 and was recommending that no changes be made to the rule at this time. He noted that the Department received no written comments on the rule.

After a brief discussion, Mrs. Stewart made a motion to recommend that the Commission find that the reasons for adopting **7 TAC Section 91.7000** continue to exist and that the rule be readopted without change. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC Section 91.8000 Concerning Discovery of Confidential Information. Commissioner Feeney briefly explained that in accordance with the Commission's

Rule Review Plan, staff had reviewed 7 TAC Chapter 91, Subchapter Q and was recommending that no changes be made to 7 TAC Section 91.8000 at this time. He further noted that the Department received no written comments on the rule.

After a short discussion, Mr. Gilman made a motion to recommend that the Commission find that the reasons for adopting **7 TAC Section 91.8000** continue to exist and that the rule be readopted without change. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Take Action to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.709 Concerning Member Business Loans. Commissioner Feeney indicated that the National Credit Union Administration (NCUA) had recently adopted a final rule intended to modernize its member business loan rule (12 C.F.R. Part 723) to provide federally insured credit unions with greater flexibility and autonomy to provide commercial and business loans to their members. He noted that NCUA's final rule amends the regulatory requirements pertaining to credit union commercial lending activities by replacing the current "prescriptive requirements" with a broad "principles-based" regulatory approach. He noted that states, such as Texas, that currently have exemptions from the existing member business loan rule were "grandfathered" in the final rule. Mr. Feeney explained that without action by the Commission, 7 TAC Section 91.709 will continue to require Texas-chartered credit unions to comply with the extensive regulatory thresholds and limits and would place them at a competitive disadvantage to federally chartered credit unions when offering commercial and business loans to their members.

Commissioner Feeney explained that federally insured state chartered credit unions in a given state can be exempted from compliance with NCUA's new rule if the state supervisory authority administers a state member business loan rule that covers all of the provisions in 12 C.F.R. Part 723 and is no less restrictive, upon determination by NCUA.

Commissioner Feeney indicated that NCUA had graciously agreed to perform a courtesy review of the proposal currently before the Committee and that he had just recently learned that NCUA staff had concerns that certain provisions may be viewed as being less restrictive than those contained in the new 12 C.F.R. Part 723. Mr. Feeney indicated that he thought the proposal could be sufficiently modified to alleviate NCUA's concerned but staff was not prepared to propose new language at this time.

Chairman Vad inquired if there was any way for NCUA to give the Committee any assurances that prospective modifications to the proposal would be acceptable. Mr. Feeney indicated that it would be unlikely that NCUA would provide an official opinion until the Commission had taken formal action on a specific proposal.

After a lengthy deliberation, Mr. Gilman made a motion to table the matter and encourage the full Commission to take up and consider a revised proposal at its next meeting. Mr. Farran seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Completed Rule Review of 7 TAC, Part 8, Chapter 151 (relating to Home Equity Lending Procedures); Chapter 152 (related to Repair, Renovation, and New Construction on

Homestead Property); and Chapter 153 (relating to Home Equity Lending). Commissioner Feeney reported that in accordance with Section 2001.39, Government Code, staff has completed the review of 7 TAC, Part 8, Chapters 151, 152, and 153. He noted that the Department did received one comment in response to the notice published in the *Texas Register*. Mr. Feeney indicate that as a result of internal review by the Department, staff believes that certain revisions are appropriate and necessary with respect to Chapter 153 are being separately presented.

After a brief discussion, Mr. Tuma made a motion to recommend that the Commission find that the reasons for adopting Chapter 151, 152, and 153 continue to exist and that the Commission re-propose and readopt the rules. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(e) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 8, Chapter 153 Concerning Home Equity Lending from Rule Review. Commissioner Feeney explained that the proposed amendments are to implement changes resulting from the review of Chapter 153 under Texas Government Code, Section 2001.039. He noted that the proposed amendments relate to consumer disclosures, the types of lenders authorized to make home equity loans, and technical corrections.

After a short discussion, Mr. Tuma made a motion to recommend that the Commission take action to approve for publication and comment the proposed amendments to 7 TAC, Part 8, Chapter 153. Mr. Gilman seconded the motion and the motion was unanimously adopted.

(f) Discussion of and Possible Vote to Approve the Department's 2017-2020 Rule Review Plan as Required by Section 2001.039, Government Code. Commissioner Feeney noted that Section 2001.039, Government Code, requires a state agency to review every rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. In accordance with that requirement, staff has developed a new Rule Review Plan under which the Commission will review all of its existing rules.

After a short discussion, Mr. Gilman moved to recommend that the Commission adopt the proposed 2017-2020 Rule Review Plan. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

(g) Discussion of and Vote to Establish for Next Committee Meeting. The next meeting is tentatively scheduled the day before the next Commission meeting.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 1:50 p.m.

Kay Stewart
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

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 anytime 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, proposed amendments are prepared by staff and presented to the Rules Committee for review.
5. At a public meeting, the Rules Committee accepts public testimony on each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
6. The Committee's recommendation is presented to the Commission for consideration.
7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission approves the proposal for publication, it is transmitted to the ***Texas Register*** for publication as a "proposed" rule amendment.
9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
10. The commission may reconsider the rule anytime 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.

11. 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.
12. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

NEW BUSINESS

The Committee will discuss and possibly vote on potential recommendations to the Credit Union Commission concerning the following items:

a. The Adoption to **7 TAC Section 91.101** Concerning Definitions and Interpretations.
b. The Adoption to **7 TAC Section 91.115** Concerning User Safety at Unmanned Teller Machines (UTM).
c. The Adoption to **7 TAC Section 91.121** Concerning the Form of Consumer Complaint Notification.
d. The Adoption to **7 TAC Section 91.205** Concerning the Name of a Credit Union.
e. The Adoption to **7 TAC Section 91.209** Concerning the Submission of Call Reports and Other Information Requests
f. The Adoption to **7 TAC Section 91.1003** Concerning Voluntary Mergers and Consolidations.
g. Withdraw the Proposed New 7 TAC Section 91.1010 Previously Published in the Texas Register and Republish for Comment Proposed **New 7 TAC Section 91.1010.**
h. Adoption of the Completed Rule Review of **7 TAC, Part 6, Chapter 91 Subchapters D** (Power of Credit Unions), **M** (Electronic Operations), and **N** (Emergency or Permanent Closing of Office or Operation).
i. Approval for Publication and Comment Proposed Amendments to **7 TAC Section 91.4001** Concerning Authority to Conduct Electronic Operations.
j. Approval for Publication and Comment Proposed Amendments to **7 TAC Section 91.4002** Concerning Transactional Web Site Notice Requirement; and Security.
k. Approval for Publication and Comment Proposed Amendments to **7 TAC Section 91.5001** Concerning Emergency Closing.
l. Approval for Publication and Comment Proposed Amendments to **7 TAC Section 91.5005** Concerning Permanent Closing of an Office.

m. Approval for Publication and Comment the Proposed Amendments, a New Section, and a Repeal in **7 TAC, Part 8, Chapter 153**, Concerning Home Equity Lending.

n. Discussion and Consideration on Potential Rules to Implement HB 471 (Proposition 7 on the November 7 Ballot).

o. Establish Tentative Date for Next Committee Meeting (March 8, 2018, at 1:00 pm.).

RECOMMENDED ACTION: The Department requests that the Committee take action as indicated on the documents contained on ***Tab C.***

DEFINITIONS AND INTERPRETATIONS

C. (a) Discussion, Consideration and Possible Vote to Recommend that the Credit Union Commission Take Action to Adopt Amendments to 7 TAC Section 91.101 Concerning Definitions and Interpretations.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.101. No comments were received in regards to the proposed amendments.

In general, the purpose of the amended rule 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 add one new definition, modify four definitions, and delete two definitions.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.101.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to adopt the proposed amendments to 7 **TAC Section 91.101** as previously published in the *Texas Register*.

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) adopts amendments to Section 91.101 concerning definitions and interpretations, without changes to the proposal as published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3719). The amended rule will not be republished.

In general, the purpose of the amendments to Section 91.101 is to implement changes resulting from the commission's review of Chapter 91 Subchapter A under Texas Government Code, Section 2001.039. The amendments 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.

The department received no comments regarding 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.

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

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) 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.

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

(10) 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) 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) 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) Improved residential property--residential real estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily 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.

(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) 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) 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 divided by the current value of the collateral.

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

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

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

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

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

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

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

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

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

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

(37) 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) 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) 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.

USER SAFETY AT UNMANNED TELLER MACHINES

C. (b) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 91.115 Concerning User Safety at Unmanned Teller Machines.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.115. No comments were received in regards to the proposed amendments.

In general, the purpose of the amended rule is to implement changes resulting from the commission's review of Chapter 91 Subchapter A, under Texas Government Code, §2001.039. The proposed amendments 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.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.115.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.115** as previously published in the *Texas Register*.

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) adopts amendments to Section 91.115 concerning user safety at unmanned teller machines, without changes to the proposal as published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3722). The amended rule will not be republished.

In general, the purpose of the amendments to Section 91.115 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 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.

The department received no comments regarding 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 <*> 59.310, which provides that the commission shall adopt rules to implement Subchapter D of Finance Code, Chapter 59.

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

§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, 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. 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.

(2) Content of notice. The notice of basic safety precautions required by this subsection 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 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.

CONSUMER COMPLAINT NOTIFICATION

C. (c) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 91.121 Concerning the Form of Consumer Complaint Notification.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.121. No comments were received in regards to the proposed amendments.

In general, the purpose of the amended rule is to implement changes resulting from the commission's review of Chapter 91 Subchapter A, under Texas Government Code, §2001.039. 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.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.121.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.121** as previously published in the *Texas Register*.

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) adopts amendments to Section 91.121 concerning the form of consumer complaint notification, without changes to the proposal as published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3724). The amended rule will not be republished.

In general, the purpose of the amendments to Section 91.121 is to implement changes resulting from the commission's review of Chapter 91 Subchapter A under Texas Government Code, Section 2001.039. 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.

The department received no comments regarding 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, and under Texas Finance Code <*>15.409 which requires the Commission to adopt rules for directing complaints to the Department.

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

§91.121. Complaint Notification.

(a) Definition. 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.

(b) Required Notice.

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

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

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address

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

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

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

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

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

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

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

C. (d) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 91.205 Concerning the Name of a Credit Union.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.205. No comments were received in regards to the proposed amendments.

In general, the purpose of the amended rule is to implement changes resulting from the commission's review of Chapter 91 Subchapter A, under Texas Government Code, §2001.039. The 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.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.205.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.205** as previously published in the *Texas Register*.

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) adopts amendments to Section 91.205 concerning the name of a credit union, without changes to the proposal as published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3725). The amended rule will not be republished.

In general, the purpose of the amendments to Section 91.205 is to implement changes resulting from the commission's review of Chapter 91 Subchapter B under Texas Government Code, Section 2001.039. 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 appropriate due diligence in selecting a credit union name.

The department received no comments regarding 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, and under Texas Finance Code <*>122.003 which sets out requirements for a credit union name.

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

§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 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.

SUBMISSION OF CALL REPORTS AND OTHER INFORMATION REQUESTS

C. (e) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 91.209 Concerning the Submission of Call Reports and Other Information Requests.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.209. No comments were received in regards to the proposed amendments.

In general, the purpose of the amended rule is to implement changes resulting from the commission's review of Chapter 91 Subchapters A, under Texas Government Code, §2001.039. Furthermore, it 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.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.209.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.209** as previously published in the *Texas Register*.

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) adopts amendments to Section 91.209 concerning the submission of call reports and other information requests, without changes to the proposal as published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3725). The amended rule will not be republished.

In general, the purpose of the amendments to Section 91.209 is to implement changes resulting from the commission's review of Chapter 91 Subchapter B under Texas Government Code, Section 2001.039. 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 date for submitting its Form 5300.

The department received no comments regarding 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, and under Texas Finance Code <*>122.101, which directs credit unions to submit call reports to the commissioner.

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

§91.209. Call Reports and Other Information Requests.

(a) Each credit union shall prepare and submit, in a manner prescribed by the commissioner, a quarterly financial and statistical report. 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 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 under subsection (a).

VOLUNTARY MERGERS AND CONSOLIDATIONS

C. (f) Discussion, Consideration, and Possible Vote to Take Action to Adopt Amendments to 7 TAC Section 91.1003 Concerning Voluntary Mergers and Consolidations.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.1003. One comment was received in regards to the proposed amendments.

In general, the purpose of the amended rule is to implement changes resulting from the commission's review of Chapter 91 Subchapter A, under Texas Government Code, §2001.039. The proposed amendment would require credit unions to include in their merger plan a description of any arrangements providing a substantial increase in compensation or benefits, of any sort, to a board member or senior management employee in connection with the merger/consolidation. Further, the proposal defines the term "substantial" to be an amount that exceeds $1,000 in total.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission the adoption of the proposed amendments to Rule 91.1003.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.1003** as previously published in the *Texas Register*.

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) adopts amendments to Section 91.1003 concerning voluntary mergers and consolidations, without changes to the proposal as published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3726). The amended rule will not be republished.

In general, the purpose of the amendments to Section 91.1003 is to implement changes resulting from the commission's review of Chapter 91 Subchapter J under Texas Government Code, Section 2001.039. The proposed amendment would require credit unions to include in their merger plan a description of any arrangements providing a substantial increase in compensation or benefits, of any sort, to a board member or senior management employee in connection with the merger/consolidation. The amendments also defined the term "substantial" to be an amount that exceeds $1,000 in total.

The Commission received one comment regarding the proposed amendments. The commenter, Texas Trust Credit Union, supported the concept that some reporting may be appropriate but suggested that some type of materiality threshold should be established to avoid the need to disclose small or minimal amounts for such things as appreciation plaques or awards. The Commission agrees that a de minimis reporting exception is appropriate, and as originally published the amendments provide that only amounts that exceed $1,000 are required to be reported. It is not the intention of the Commission to substitute its business judgment for that of the boards of the credit unions on reasonable compensation arrangements. The amendments are strictly focused on transparency and the principle that full disclosure usually results in more informed and better credit union decisions.

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, and under Texas Finance Code <*>122.156, which sets out the requirements for rules adopted for mergers or consolidations.

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

§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.

(4) Substantial – An amount that is large in size, value, or importance. For purposes of this section, an amount is substantial if it exceeds $1,000.00 in total.

(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 substantial remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other substantial 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) the current financial reports of each credit union;

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

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

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

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

(8) 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) 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.

TEXAS TRUST
CREDIT UNION

1900 Country Club Drive
Mansfield, TX 76063

PO Box 2260
Mansfield, TX 76063

972.263.5171
800.527.3600

August 28, 2017

Commissioner Harold Feeney
Texas Credit Union Department
914 E. Anderson Lane
Austin, TX 78752

Dear Commissioner Feeney:

I am writing to provide you with our thoughts regarding the proposed changes to Rule 91.1003, specifically item (d) (1) regarding the requirement for disclosure of any remuneration to board members or senior management of the acquiree credit union.

While we agree there should be some reporting, we believe that a threshold should be established to trigger disclosure. As written, if a credit union issues an appreciation plaque or award, it must be disclosed.

We appreciate the opportunity to provide input to the proposed rule changes. If you have questions or would like to discuss this further, please feel free to contact me.

Sincerely,

Pamela Stephens
EVP/COO

VOLUNTARY LIQUIDATION

C. (g) Withdraw the Proposed New 7 TAC Section 91.1010 Previously Published in the Texas Register and Republish for Comment Proposed New 7 TAC Section 91.1010.

BACKGROUND: At its July meeting, the Commission approved for publication and comment in the *Texas Register* the proposed new Rule 91.1010. No comments were received on the proposed new rule, however, staff has identified certain changes that should be made to improve readability, provide better clarity on voting requirements, and prohibit any director or senior management employee from receiving any economic benefit in connection with the voluntary liquidations. Staff suggest that the previously published proposal should be withdrawn and a new revised proposal be approved for publication and comment.

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 should 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 requests that the Committee recommend to the Commission the withdrawal of the previously published version of new Rule 91.1010 and approve the revised proposal for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission withdraw the previously published version of new 7 TAC Section 91.1010 and approve for publication and comment the modified version of proposed new **7 TAC Section 91.1010** concerning voluntary liquidations.

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) withdraws the proposed new Section 91.1010 previously published in the July 28, 2017 issue of the *Texas Register* (42 TexReg 3729) and 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, new Section 91.1010 results from the commission's review of Chapter 91 Subchapter J under Texas Government Code, Section 2001.039. Although no comments were received on the published proposal, the Commission has determined that certain changes were appropriate to improve readability, provide better clarity on voting requirements, and to prevent any director or senior management employee from receiving any economic benefit in connection with the voluntary liquidation.

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 revised 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. It also provides that if the membership does not approve the recommendation to liquidate, the board of directors must request authorization from the Department before the credit union resumes business, resubmits the question to the membership, or requests the appointment of a conservator. Department review helps ensure that the credit union is properly positioned before the credit union implements whichever option the board of directors chooses.

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/deposit. 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 a member may vote on the liquidation proposal by submitting the ballot in person at a special meeting or by mailing in the ballot

The subsection also prohibits the offering of inducements to encourage members to participate in the vote. Further the subsection requires credit unions to conduct its membership vote in a fair and legal manner and hold its special meeting in a manner conducive to accommodating members wishing to attend.

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) Economic benefit prohibits a director or senior management employee from receiving any economic benefit in connection with the voluntary liquidation.

Subsection (i) 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 (j) 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 (k) 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 (l) 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 inquires received after the liquidation has been completed.

Before action is taken to voluntarily liquidate a credit union, the Commission encourages the board of directors 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 at least a portion of a members' shares/deposits may not be available during liquidation. This inability of a members to access their funds could impose significant personal hardships on the members.

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 adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- increase fees paid to the department;
- expand existing regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

For the first five years the rule will be in effect, the rule will create a new regulations related to the voluntary liquidation of a credit union.

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. 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 board adopts the resolution, 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 (f) of this section.

(4) The board's recommendation to dissolve and liquidate the credit union must be approved by the affirmative vote of a majority of members who submit ballots in person at the special membership meeting and by mail. 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.

(5) 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.

(6) Within 5 days after an affirmative vote to dissolve and liquidate the credit union the chairman shall notify the commissioner in writing 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 after the liquidation date; and

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

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

(3) Creditors shall be provided at least 30 days after 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 membership votes to dissolve and liquidate the credit union, the credit union shall immediately discontinue 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, in the same credit union, granting of loans, and making of investments other than short-term investments shall be discontinued. The credit union shall continue to collect on loans with interest and shall continue to pay necessary expenses during the period of liquidation. The credit union shall direct its Members to discontinue the use of share drafts and credit cards, and shall inform Members that on and after the 15th calendar day after the liquidation date, items will no longer be cleared.

(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 shall provide for the liquidation of the credit union within one year of the liquidation date. At a minimum, a credit union's liquidation plan shall 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) Schedule for payment of all debts and liabilities owed by the credit union;

(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 persons 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, and in a manner that complies with subsection (j) of this section.

(f) Approval of the liquidation proposal by membership.

(1) Not later than the 10th calendar day before the date of the special membership meeting to consider approval of the liquidation, the credit union shall notify, by first class mail, the Commissioner and each member who is eligible to vote on the proposal. The notice must adequately describe the purpose and subject matter of the vote and clearly inform members that they may vote at a special meeting held on the date set for the vote or by mailing in the ballot. The notice must include a clear and conspicuous disclosure of how the voluntary liquidation may

affect the availability of funds on deposit and state the date, time, and place of the meeting. A ballot must be included in the same envelope as the notice.

(2) No director or senior management employee may receive any economic benefit in connection with the voluntary liquidation of the credit union other than compensation and other benefits paid to directors and senior management employees in the ordinary course of business.

(3) A credit union considering the question of liquidation must conduct its membership vote in a fair and legal manner. No inducements may be offered to encourage members to participate in the vote.

(4) A credit union should be careful to conduct its special membership meeting in a manner conducive to accommodating all members wishing to attend, including selecting a meeting location that can accommodate the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules.

(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 credit union shall close its books and compute the pro rata distribution to its members. 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 the member's last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means authorized by the 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 after the final distribution of assets to the members begins.

(h) Economic benefit. No director or senior management employee may receive any economic benefit in connection with the voluntary liquidation of the credit union other than compensation and other benefits paid to directors and senior management employees in the ordinary course of business.

(i) 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 within 10 business days after 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, or is being conducted in violation of this section, 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.

(j) Retention of records.

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

(2) The custodian shall retain all records of the liquidating credit union that are necessary to establish that the credit union paid creditors, and distributed assets to the members fairly and equitably in accordance with the approved liquidation plan. The custodian shall retain the records for a period of five years following the date the Department cancels the credit union's charter.

(k) Certificate of dissolution and liquidation. Within 120 days after the credit union begins final distribution of assets to members, it shall file with the Department a duly executed Certificate of Dissolution and Liquidation.

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

C. (h) Discussion, Consideration, and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 6, Chapter 91 Subchapters D (Powers of Credit Unions), M (Electronic Operations), and N (Emergency or Permanent Closing of Office or Operation).

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 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 has reviewed 7 **TAC Part 6, Chapter 91, Subchapter D (Powers of Credit Unions), M (Electronic Operations), and N (Emergency or Permanent Closing of Office or Operation)** and believes certain revisions are appropriate and necessary. Amendments to the noted chapters are being separately presented for proposal.

Notice of review and a request for comments on the rules in this chapter was published in the August 25, 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 requests that the Committee recommend that the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we recommend that the Commission find that the reasons for adopting 7 **TAC Chapter 91, Subchapter D (Powers of Credit Unions), M (Electronic Operations), and N (Emergency or Permanent Closing of Office or Operation)** 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 D. Powers of Credit Unions
Subchapter M. Electronic Operations
Subchapter N. Emergency or Permanent Closing of Office or Operation

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapters D (relating to Powers of Credit Unions), Subchapter M (relating to Electronic Operations), and Subchapter N (relating to Closing of Office or Operation) of the Texas Administrative Code, Title 7, Part 6, consisting of Sections 91.401 – 91.408, 91.4001, 91.4002, 91.5001, 91.5002, and 91.5005. The Commission readopts 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 D, M, and N was published in the *Texas Register* as required on August 25, 2017 (42 RexReg 4313). The Department received no comments on the notice of intention to review.

As a result of its internal review, the Commission has determined that certain revisions are appropriate and necessary. The Commission is concurrently proposing amendments to Chapter 91 Subchapters M and N as published elsewhere in this issue of the Texas Register. Subject to the concurrently proposed amendments to Chapter 91, Subchapters M and N, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter D, M, and N in accordance with the requirements of Texas Government Code, Section 2001.039. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapters D, M, and N.

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 D. Powers of Credit Unions

§91.401. Credit Union Ownership of Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§91.402. Insurance for Members.

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

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

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

(A) the value of the collateral;

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

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

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

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

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

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

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

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

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

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

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

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

§91.403. Debt Cancellation Products; Federal Parity.

(a) Authority. Provided it complies with this section, a credit union may offer any debt cancellation product a federal credit union is permitted to offer. For the purposes of this section, a debt cancellation product is a two-party agreement between the credit union and the member under which the credit union agrees to waive, suspend, defer, or cancel all or part of a member's obligation to pay an indebtedness under a lease, loan, or other extension of credit upon the occurrence of a specified event. Debt cancellation products are considered loan products, not insurance products and, consequently, are not regulated by the Texas Department of Insurance. The credit union may offer debt cancellation products for a fee. If the debt cancellation product is offered for a fee basis, then the member's participation must be optional.

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

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

(2) The debt cancellation product must provide for refunding or crediting to the member any unearned fees resulting from termination of the member's participation in the product, whether by prepayment of the extension of credit or otherwise. Any unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method. Before the member purchases the debt cancellation product, the credit union must state in writing that the purchase of the debt cancellation product is optional, the conditions for and method of calculating any refund of the debt cancellation fee, including when fees are considered earned by the credit union, and that the member should carefully review all of the terms and conditions of the debt cancellation agreement prior to signing the agreement.

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

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

(e) For purposes of this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

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

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

(b) Approval Requirement.

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

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

§91.405. Records Retention and Preservation.

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

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

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

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

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

(d) Ten year retention. Records which are significant to the continuing operation of the credit union must be retained until the expiration of ten years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later. The records are:

(1) minutes of meetings of the members, the board of directors, and board committees;

(2) journal and cash record;

(3) general ledger and subsidiary ledgers;

(4) for active accounts, one copy of each individual share and loan ledger or its equivalent;

(5) comprehensive annual audit reports including evidence of account verification; and

(6) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

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

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

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

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

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

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

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

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

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

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

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

(k) Records preservation compliance. Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance so long as the processor meets the minimum requirements of this section. Credit unions that have in-house capabilities shall make the necessary provisions to safeguard the backup of data on a continuing basis.

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

§91.406. Credit Union Service Contracts.

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

subject to commission rules and examination by the commissioner to the extent permitted by law.

§91.407. Electronic Notification.

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

(1) the member agrees in writing or electronically to use electronic instead of hard-copy notifications;

(2) the member has the ability to print or download the notification;

(3) evidence of the electronic notification is retained in accordance with §91.405 (relating to Records Retention); and

(4) both the credit union and the member have the capacity to receive electronic messages.

§91.408. User Fee for Shared Electronic Terminal.

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

Subchapter M. Electronic Operations

§91.4001. Authority to Conduct Electronic Operations.

(a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

(b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.

(c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:

(1) Identify, assess, and mitigate potential risks and establish prudent internal controls, and system backup procedures; and

(2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:

(A) the prevention of unauthorized access to credit union records and credit union members' records;

(B) the prevention of financial fraud through the use of electronic means or facilities; and

(C) compliance with applicable security device requirements for teller machines contained elsewhere in Chapter 91.

(d) All credit unions engaging in such electronic activities must comply with all applicable state and federal laws and regulations as well as address all safety and soundness concerns.

(e) A credit union shall review, on at least an annual basis, its system backup procedures for all electronic activities.

(f) A credit union shall not be considered doing business in this State solely because it physically maintains technology, such as a server, in this State, or because the credit union's product or services are accessed through electronic means by members located in this State.

(g) A credit union that shares electronic space, including a co-branded web site, with a credit union affiliate, or another third-party must take reasonable steps to clearly and conspicuously distinguish between products and services offered by the credit union and those offered by the credit union's affiliate, or the third-party.

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

(a) A credit union must file a written notice with the commissioner at least 30 days before it establishes a transactional web site. The notice must:

(1) Include an address for and a description of the transactional features of the web site;

(2) Indicate the date the transactional web site will become operational; and

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

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

(c) Credit unions, which have a transactional web site, must provide for a review of the adequacy of the web site's security measures at least once every two years. The scope of the review should cover the adequacy of physical and logical protection against unauthorized access including denial of service and other forms of electronic access. If the credit union outsources this technology platform, it can rely on testing performed for the service provider to the extent it satisfies the scope requirements of this subsection.

Subchapter N. Emergency or Permanent Closing of Office or Operation

§91.5001. Emergency Closing.

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

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

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

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

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

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

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

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

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

(B) labor dispute or strike;

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

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

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

(F) epidemic or other catastrophe; or

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

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

§91.5002. Effect of Closing.

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

§91.5005. Permanent Closing of an Office.

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

AUTHORITY TO CONDUCT ELECTRONIC OPERATIONS

C. (i) Discussion, Consideration, and Possible Vote to Take Action to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.4001 Concerning Authority to Conduct Electronic Operations.

BACKGROUND: The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter M under the Texas Government Code Section 2001.039. The proposed amendments would impose a new requirement that any credit union using electronic means or facilities to employ a tested incident response to minimize the impact of a data breach or other incident on members. The proposal also expands the examples of electronic means or facilities to include mobile applications and eliminates the reference to the World Wide Web.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission approval of the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.4001** concerning authority to conduct electronic operations.

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

The Credit Union Commission (the Commission) proposes amendments to Section 91.4001 concerning authority to conduct electronic operations. The proposed amendments would expand the examples of electronic means or facilities to include mobile applications and eliminates the example of the World Wide Web. The proposal also institutes a new requirement that credit unions that use electronic means and facilities must employ a tested incident response to minimize the impact of a data breach or other incident on members.

In general, the purpose of the amendments to Section 91.4001 is to implement changes resulting from the commission's review of Chapter 91 Subchapter M under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters D, M, and N was published in the Texas Register on August 25, 2017 (42 TexReg 4313) and the amendments 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.

Incident response plans are similar to other crisis management plans credit unions should develop. A plan isn't a plan, however, until it has survived an actual test. It is important for credit unions to periodically test their response plans before an actual incident "tests" it for the credit union.

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 reduce reputation risk during and in the aftermath of an incident and provide greater ease of use of the rule. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- increase fees paid to the department;
- create a new regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

For the first five years the rule will be in effect, the rule will expand existing regulations related to conducting electronic operations.

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. 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.

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

§91.4001. Authority to Conduct Electronic Operations.

(a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, **mobile applications,** ~~**the World Wide Web**~~ personal computers, the Internet, telephones, and other similar electronic devices.

(b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.

(c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:

(1) Identify, assess, and mitigate potential risks and establish prudent internal controls, and system backup procedures;

(2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:

(A) the prevention of unauthorized access to credit union records and credit union members' records;

(B) the prevention of financial fraud through the use of electronic means or facilities; and

(C) compliance with applicable security device requirements for teller machines, contained elsewhere in Chapter 91; **and**

(3) Employ a tested incident-response plan to minimize the impact of a data breach, or other adverse incident, on members while quickly restoring operations, credibility, and security.

(d) All credit unions engaging in such electronic activities must comply with all applicable state and federal laws and regulations as well as address all safety and soundness concerns.

(e) A credit union shall review, on at least an annual basis, its system backup procedures for all electronic activities.

(f) A credit union shall not be considered to be doing business in this State solely because it physically maintains technology, such as a server, in this State, or because the credit union's product or services are accessed through electronic means by members located in this State.

(g) A credit union that shares electronic space, including a co-branded web site, with a credit union affiliate, or another third-party must take reasonable steps to clearly and conspicuously distinguish between products and services offered by the credit union and those offered by the credit union's affiliate, or the third-party.

TRANSACTIONAL WEB SITE NOTICE REQUIREMENT; AND SECURITY

C. (j) Discussion, Consideration, and Possible Vote to Take Action to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.4002 Concerning Transactional Web Site Notice Requirement; and Security.

ACKGROUND: The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter M under the Texas Government Code Section 2001.039. The proposed amendments would require a credit union to review the adequacy of its web site's security measures annually instead of once every two years. In addition, the proposed amendments would update the rule to provide clarification and better readability.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission approval of the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.4002 concerning transactional web site notice requirement; and security.

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

The Credit Union Commission (the Commission) proposes amendments to Section 91.4002 concerning transactional web site notice requirements; and security review. The proposed amendments would require a review of the adequacy of the web site's security measures annually instead of once every two years. In addition, the proposed amendments would provide clarification, better readability, and would update the rule.

In general, the purpose of the amendments to Section 91.4002 is to implement changes resulting from the commission's review of Chapter 91 Subchapter M under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters D, M, and N was published in the Texas Register on August 27, 2017 (42 TexReg 4313), and the amendments 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 technology continues to ingrain itself into nearly all aspects of credit union operations, the threat of being hacked becomes more and more real. As a result, cyber security is a major concern for not just individuals, but also credit unions, who are trusted to securely store data that ranges from member names and email addresses to even more sensitive information like credit card numbers and trade secrets. These days, data is currency, and plenty of nefarious folks are willing to spend – and risk – almost anything to get it.

With all of this in mind, it's more critical now than ever before that credit unions implement a more robust approach to security testing for their websites that are capable of receiving or storing important data from members.

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 improved practices to mitigate risk and greater ease of use of the rule. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

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

- increase fees paid to the department;
- create a new regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

For the first five years the rule will be in effect, the rule will expand existing regulations related to transactional website notice requirements and security review.

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. 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.

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

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

(a) A credit union must file a written notice with the commissioner at least 30 days before it establishes a transactional web site. The notice must:

(1) Include an address for and a description of the transactional features of the web site;

(2) Indicate the date the transactional web site will become operational; and

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

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

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

EMERGENCY CLOSING

C. (k) Discussion, Consideration, and Possible Vote to Take Action to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.5001 Concerning Emergency Closing.

BACKGROUND: The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter N under Texas Government Code Section 2001.039. The proposed amendments to this rule would encourage a credit union to post notice of an emergency closing of an office or operation on its website and any social media pages.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission approval of the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.5001** concerning emergency closing.

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

The Credit Union Commission (the Commission) proposes amendments to Section 91.5001 concerning emergency closing. The proposed amendments would institute a new requirement that a credit union should post notice of an emergency closing of an office or operation on its website and any social media pages.

In general, the purpose of the amendments to Section 91.5001 is to implement changes resulting from the commission's review of Chapter 91 Subchapter N under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters D, M, and N was published in the Texas Register on August 27, 2017 (42 TexReg 4313) and the amendments 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.

Web sites and social media are not a fad or trend. It's an enduring reality of online existence. Members are increasingly embracing these social networks as an integral part of their everyday lives. Credit union website and social media accounts are accessible 24/7/365 and are indispensable in getting the word out to members about emergency closings of offices and operations.

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 better notice to members. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- increase fees paid to the department;
- create a new regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

For the first five years the rule will be in effect, the rule will expand existing regulations related to an emergency closing of a credit union office or operation.

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. 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.

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

§91.5001. Emergency Closing.

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

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

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

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

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

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

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

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

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

(B) labor dispute or strike;

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

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

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

(F) epidemic or other catastrophe; or

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

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

PERMANENT CLOSING OF AN OFFICE

C. (l) Discussion, Consideration, and Possible Vote to Take Action to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.5005 Concerning Permanent Closing of an Office.

BACKGROUND: The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 91, Subchapter N under the Texas Government Code Section 2001.039. The proposed amendments to this rule would require a credit union to post notice of a permanent closing of an office on its website and any social media pages at least 30 days prior to the proposed closing.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission approval of the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.5005** permanent closing of an office.

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

The Credit Union Commission (the Commission) proposes amendments to Section 91.5005 concerning permanent closing of an office. The proposed amendments would institute a new requirement that a credit union post notice of the permanent closing of an office on its website and any social media pages at least 30 days prior to the proposed closing.

In general, the purpose of the amendments to Section 91.5005 is to implement changes resulting from the commission's review of Chapter 91 Subchapter N under Texas Government Code, Section 2001.039. The notice of intention to review Chapter 91, Subchapters D, M, and N was published in the Texas Register on August 25, 2017 (42 TexReg 4313) and the amendments 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.

Web sites and social media are not a fad or trend. It's an enduring reality of online existence. Members are increasingly embracing these social networks as an integral part of their everyday lives. Credit union website and social media accounts are accessible 24/7/365 and are indispensable in getting the word out to members about the permanent closings of office.

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 better notice to members. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- increase fees paid to the department;
- create a new regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

For the first five years the rule will be in effect, the rule will expand existing regulations related to the permanent closure of credit union office.

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. 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.

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

§91.5005. Permanent Closing of an Office.

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

C. (m) Discussion of and Possible Vote to Take Action on the Approval for Publication and Comment the Proposed Amendments, a New Section, and a Repeal in 7 TAC, Part 8, Chapter 153, Concerning Home Equity Lending.

BACKGROUND: The main purpose of the proposal is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

RECOMMENDED ACTION: The Department request that the Committee recommend to the Commission approval of the amendments, new section, and repeal in 7 TAC, Chapter 153 for publication in the *Texas Register*, if the voters approve SJR 60 (Proposition 2) in the November 7, 2017 Constitutional Amendment Election.

RECOMMENDED MOTION: I move that the Committee recommend conditional approval for publication and comment in the *Texas Register* the proposed amendments, a new section, and a repeal in 7 TAC, Part 8, Chapter 153, concerning home equity lending, subject to a favorable vote on Proposition 2 in the November 7, 2017 Constitutional Amendment Election.

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

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to the following home equity lending interpretations: §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86; propose new §153.45; and propose the repeal of §153.87, in 7 TAC, Chapter 153, concerning Home Equity Lending.

The proposal applies the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §11.308 and §15.413.

The main purpose of the proposal is to implement SJR 60, passed by the Texas Legislature in 2017. SJR 60 amends Section 50 and applies to home equity loans entered on or after January 1, 2018.

SJR 60's constitutional amendments relate primarily to six issues. First, SJR 60 amends Section 50(a)(6)(E) by replacing the current three percent fee limitation with a two percent limitation, and specifying that four types of fees are not included in the limitation: an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee. Second, SJR 60 amends Section 50(a)(6)(I) by removing the current prohibition on a home equity loan for agricultural property. Third, SJR 60 amends Section 50(a)(6)(P) by adding certain subsidiaries of depository institutions to the list of lenders authorized to make home equity loans, and replacing a reference to a "mortgage broker" with "mortgage banker or mortgage company." Fourth, SJR 60 amends Section 50(f) by allowing a home equity loan to be refinanced as a non-home-equity loan if four conditions are met: a one-year timing limitation, a limitation on advance of additional funds, an 80% loan-to-value limitation, and a required disclosure to the property owner. Fifth, SJR 60 amends Section 50(g) to make conforming changes to the required 12-day consumer disclosure. Sixth, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit.

After the legislature passed SJR 60, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") circulated an initial precomment draft of proposed changes to interested stakeholders. The agencies then held a stakeholder meeting where attendees provided oral precomments. In addition, the agencies received four informal written precomments from stakeholders. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agencies appreciate the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new section, and repeal are provided in the following paragraphs.

The proposed amendments to §§153.1, 153.5, and 153.14 implement SJR 60's amendments to Section 50(a)(6)(E). As discussed previously, SJR 60 amends Section 50(a)(6)(E) by replacing the current

three percent fee limitation with a two percent limitation, and specifying that certain types of fees are not included in the limitation.

A proposed amendment to §153.1(15) replaces the phrase "three percent limitation" with "two percent limitation."

In §153.5, proposed amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(E). Throughout §153.5, proposed amendments replace the phrase "three percent limitation" with "two percent limitation." Proposed amendments to paragraph (3)(B) in §153.5 replace the phrase "legitimate discount points" with "bona fide discount points," reflecting SJR 60's exclusion of bona fide discount points from the two percent limitation. In paragraph (7), regarding third-party charges, a proposed amendment moves a sentence providing an example of a third-party charge in order to provide better clarity. The amendment also removes the phrase "mortgage brokers' fees" from paragraph (7), reflecting SJR 60's removal of the phrase "mortgage broker" from Section 50. This amendment also responds to precomments stating that the phrase "mortgage brokers' fees" is no longer necessary. Proposed amendments to paragraph (8), regarding charges to evaluate, conform to SJR 60's amendments on fees for appraisals, surveys, and title reports.

Proposed new paragraphs (13)-(16) in §153.5 identify the four types of fees that may be excluded from the two percent limitation under SJR 60's amendments to Section 50(a)(6)(E): an appraisal fee, a property survey fee, a mortgagee title insurance premium, and a title report fee.

Proposed §153.5(13) states that an appraisal must be performed by a person who is not an employee of the lender, and that the excludable appraisal fee is limited to the fee paid to the appraiser for completion of the appraisal, not the fee for appraisal management services. This paragraph is based on Section 50(a)(6)(E)(i) of SJR 60, which states that the two percent limitation excludes a fee for "an appraisal performed by a third party appraiser." Under Texas Occupations Code, §1104.158(a), an appraisal management company must "separately state the fees: (1) paid to an appraiser for the completion of an appraisal; and (2) charged by the company for appraisal management services" in reporting to a client. Proposed paragraph (13) specifies that only the first of these two fees, the fee paid to the appraiser for the completion of the appraisal, may be excluded from the two percent limitation. At the stakeholder meeting, one attendee asked whether a fee for an evaluation that is not an appraisal may be excluded. This fee would be subject to the two percent limitation under proposed §153.5(8), which provides that charges to evaluate are generally subject to the two percent limitation, and would not be excludable under proposed §153.5(13), which provides an exception to this general requirement for certain appraisal fees.

Proposed §153.5(14) states that a fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation, and that the property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071. This paragraph is based on Section 50(a)(6)(E)(ii) of SJR 60, which states that the two percent limitation excludes a fee for "a property survey performed by a state registered or licensed surveyor."

Proposed §153.5(15) states that an excludable premium for title insurance is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance (TDI), plus authorized premiums for applicable endorsements, and that rules adopted by the TDI govern the applicability of endorsements and the authorized amount for each premium. This paragraph is based on Section 50(a)(6)(E)(iii) of SJR 60, which states that the two percent limitation excludes a fee for "a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law."

One precommenter recommends removing the applicability requirement in §153.5(15)(C), which states that any endorsements must be applicable to the mortgagee policy for the equity loan. TDI has identified various endorsements that may be used to modify a title insurance policy, and has established premiums for each type of endorsement. The endorsements are described in TDI's Title Insurance Basic Manual. The authorized endorsements include Form T-42 (insuring against loss due to failure to comply with Section 50's requirements for home equity loans), as well as endorsements relating to minerals, condominiums, balloon mortgages, and other issues. The applicability requirement in proposed §153.5(15)(C) is intended to capture the concept that a lender should not charge the property owner a premium for an endorsement that does not apply to the transaction. For example, if the property is not a manufactured home, then the property owner should not be required to pay a premium for a manufactured housing endorsement, Form T-31. Similarly, if the loan is not a home equity line of credit, then the property owner should not be required to pay a premium for a future advance or revolving credit endorsement, Form T-35. As stated in paragraph (15), TDI's rules govern the applicability of endorsements.

At the stakeholder meeting, one attendee explained that some lenders might make amendments to title insurance policies, and that these "amendments" are not necessarily endorsements for which TDI's rules authorize a premium. The commissions believe that proposed §153.5(15) appropriately defers to TDI's rules regarding the applicability of endorsements and authorized amount of the premium. TDI's rules, not the labels used by the parties, will determine whether the endorsement is authorized.

Proposed §153.5(16) states that an excludable fee for a title report must be less than the applicable basic premium rate for title insurance, and that the title report fee may not be excluded if the equity loan is covered by a mortgagee policy of title insurance. This paragraph is based on Section 50(a)(6)(E)(iv) of SJR 60, which states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The agencies understand that this fee is intended to be excluded in transactions where the lender obtains a title report instead of a mortgagee policy of title insurance. In addition, proposed §153.5(16)(C) explains that the fee must comply with applicable law, including Texas Finance Code, §342.308(a)(1), which limits title examination fees for certain secondary mortgages.

One precommenter makes the following recommendation regarding paragraph (16): "Rather than require that such report fee be less than the state base premium without endorsements, it would be more appropriate to provide that it cannot exceed the state base premium for a mortgagee policy with endorsements." The commissions disagree with this recommendation. Section 50(a)(6)(E)(iv) of SJR 60 states that the two percent limitation excludes a fee for "a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law." The plain language of this provision requires the title report fee to be less than the state base premium for title insurance without endorsements.

In the initial precomment draft sent to stakeholders, paragraphs (13), (14), (15), and (16) each included a statement that the relevant fee "must comply with applicable law." This phrase was based on existing interpretations in current §153.5, which state that certain fees may be charged "to the extent authorized by applicable law" or that the lender "must comply with applicable law." Two precommenters recommended removing or amending this phrase, arguing that it is unnecessary or could create confusion. At the stakeholder meeting, one attendee recommended removing the phrase "must comply with applicable law" in paragraphs (14) and (15), while acknowledging that it is appropriate to state that a surveyor must be licensed under the Texas Occupations Code. The attendee recommended a provision-by-provision approach to using the phrase. In response to these precomments, proposed §153.5 does not include the phrase "must comply with applicable law" in paragraphs (13), (14), and (15), which relate to services performed by third parties, but includes the phrase in paragraph (16) regarding the title report, where the commissions believe that the phrase is appropriate.

A proposed amendment to §153.14(2)(D) replaces the phrase "3% fee cap" with "two percent limitation."

In §153.17, regarding lenders that are authorized to make home equity loans, proposed amendments to the introductory paragraph reflect SJR 60's amendments to Section 50(a)(6)(P). Proposed amendments to §153.17(3) remove a reference to a "mortgage broker" and specify that a person licensed under Texas Finance Code, Chapter 157 is a person regulated as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

Proposed new §153.45 describes the permissible ways in which a home equity loan can be refinanced, in accordance with Section 50(f) as amended by SJR 60. Paragraphs (1)-(4) of the new section describe the four conditions that must be met to refinance a home equity loan as a non-home-equity loan under Section 50(f)(2) of SJR 60.

Proposed §153.45(1) explains that the refinance may not be closed before the first anniversary of the closing date of the home equity loan, and that the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance. This paragraph is based on Section 50(f)(2)(A) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance is not closed before the first anniversary of the date the extension of credit was closed." The statement regarding the closing date of the

refinance is based on the definition of "closing" in current §153.1(3).

Proposed §153.45(2) describes the limitation on the advance of additional funds for the refinance. This paragraph is based on Section 50(f)(2)(B) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinanced extension of credit does not include the advance of any additional funds other than: (i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or (ii) actual costs and reserves required by the lender to refinance the debt." Proposed §153.45(2)(A) explains that actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs. Proposed §153.45(2)(B) explains that reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law. The commissions believe that the statement that the reserves "must comply with applicable law" is appropriate in this provision to ensure that the lender complies with any laws governing reserve accounts, such as the escrow requirements in Regulation X, 12 C.F.R. §1024.17, and Regulation Z, 12 C.F.R. §1026.35(b).

One precommenter recommends that paragraph (2)(A) state that costs must be "actually incurred by an owner or an owner's spouse." The precommenter states that this recommendation would "conform to an exclusion for charges absorbed by a lender or a third party in §153.5(5) and (7), respectively." The commissions disagree with this recommendation. It appears that the legislature intended the phrase "actual costs" to refer to costs that the lender actually incurs and requires the owner to pay back along with other advanced amounts. If the commissions used the precommenter's recommended language, this would suggest that there is no limitation on actual costs advanced in connection with the refinance, because all costs that the lender charges are incurred by the owner. In addition, specifying that actual costs exclude costs absorbed by the lender is unnecessary, because the lender does not advance these amounts.

Proposed §153.45(3) describes the 80% loan-to-value limitation for the refinance. This paragraph is based on Section 50(f)(2)(C) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made." Subparagraphs (A), (B), and (C) in proposed §153.45(3) describe the method of calculating the principal amount of the refinance and the principal balance of other outstanding debt. These subparagraphs are based on current §153.3, which describes the 80% loan-to-value limitation for home equity loans.

One precommenter recommends adding the following subparagraph (D) in proposed §153.45(3): "On a closed-end multiple advance refinance, the principal balance also includes contractually obligated future advances not yet disbursed." The commissions disagree with this recommendation. Section 50(f)(2)(B) of SJR

60 limits the advance of funds to the amount refinanced, actual costs, and required reserves. It does not appear that the legislature intended for the Section 50(f)(2) refinance to include multiple future advances.

Proposed §153.45(4) describes the requirement to provide a disclosure to the owner in connection with the refinance. This paragraph is based on Section 50(f)(2)(D) of SJR 60, which provides the following condition that must be met to refinance a home equity loan as a non-home-equity loan: "the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed . . . ." Section 50(f)(2)(D) then includes the text of the required refinance disclosure, which provides important information about the consumer protections that a borrower loses by agreeing to refinance a home equity loan into a non-home-equity loan.

Subparagraphs (A)-(C) in proposed §153.45(4) provide guidance to lenders in calculating the three-day and 12-day periods under Section 50(f)(2)(D). These requirements are based on interpretations relating to the closing date and the required 12-day consumer disclosure for home equity loans in current §153.12 and §153.51. In particular, proposed §153.45(4)(C) states that if a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery, and that a period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. This subparagraph is nearly identical to current §153.51(1), which provides the same requirement and rebuttable presumption for the 12-day consumer disclosure under Section 50(g). The Texas Supreme Court upheld §153.51(1) in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566, 589 (Tex. 2013). The three-day rebuttable presumption is also consistent with similar presumptions for mailed notices, such as Rule 21a(c)-(e) of the Texas Rules of Civil Procedure. Proposed §153.45(4)(C) helps ensure that the borrower receives the important information in the refinance disclosure promptly after filing a loan application, and that the borrower has a full 12 days to consider this information before closing the refinance.

Two stakeholders suggested alternative language for the three-day requirement in §153.45(4)(C). At the stakeholder meeting, one attendee noted that in order to benefit from the rebuttable presumption in §153.45(4)(C), a lender would have to mail the refinance disclosure on the same day it receives the loan application. This is a result of reading the three-day presumption in §153.45(4)(C) together with the requirement to provide the disclosure within three days of the application under Section 50(f)(2)(D). The attendee expressed a concern that it would not be possible for lenders to send the refinance disclosure on the same day they receive the loan application. As an alternative, the attendee suggested a distinction between compliance with the three-day period (which would end when the lender deposits the disclosure in the mail) and compliance with the 12-day period (which would begin running when the borrower receives the disclosure). In an informal precomment, another stakeholder recommends addressing this issue by adding the following definition of "provide" in

§153.1: "deliver or place in the mail to the owner the disclosures required by Subsection 50(f)(2)(D) and Section 50(g)."

The commissions disagree with these recommendations, and believe that proposed §153.45(4)(C) appropriately requires a reasonable period for delivery of a mailed disclosure, for three reasons.

First, the requirement to allow a reasonable period for delivery is consistent with the plain meaning of the word "provide." *See, e.g.*, Webster's New Collegiate Dictionary (11th ed. 2003) (defining "provide" as "to supply or make available"). A mailed disclosure is supplied or made available to the borrower (i.e., provided) when it is delivered to the borrower. In *Norwood*, the Texas Supreme Court assumed that the 12-day disclosure is provided when the borrower receives it. *See Norwood*, 418 S.W.3d at 589 ("In giving meaning to 'provides', the Commissions have determined there is a rebuttable presumption that notice is received three days after it is mailed."). By contrast, the stakeholders' recommended changes would suggest that the disclosure is provided when it is placed in the mailbox. A disclosure is not supplied or made available to the borrower when the lender places it in a mailbox. This is why §153.45(4)(C) appropriately requires the lender to allow a reasonable period for delivery.

Second, if the commissions follow the stakeholders' recommended changes, then it is unclear whether the owner would be able to challenge the three-day presumption of delivery. The Texas Supreme Court upheld §153.51(1) because it gives homeowners an opportunity to challenge receipt and show that the consumer disclosure was not delivered in a timely manner. *See Norwood*, 418 S.W.3d at 589. Under the stakeholders' recommended changes, if an owner received the refinance disclosure weeks after submitting a loan application, it is unclear how the owner could challenge the lender's compliance with three-day requirement in Section 50(f)(2)(D).

Third, the commissions believe that adequate alternatives are available to lenders if they cannot mail the refinance disclosure on the same day they receive a loan application. Proposed §153.45 does not prohibit other methods of providing the refinance disclosure. For example, lenders may provide the disclosure electronically by e-mail or on a website in compliance with the E-Sign Act, 15 U.S.C. §§7001-7006, or they may deliver the disclosure in person. In addition, overnight U.S. mail or two-day commercial mailing might rebut the normal three-day presumption for delivery. Any of these alternatives could help the lender ensure that the refinance disclosure is provided to the owner "not later than the third business day after the date the owner submits the loan application to the lender," as required by Section 50(f)(2)(D).

In response to a precomment, proposed §153.45(4)(D) provides that one copy of the refinance disclosure may be provided to married owners. Proposed §153.45(4)(E) explains that the refinance disclosure is only a summary of substantive rights governed by the constitution. Proposed §153.45(4)(F) explains that a lender may rely on an established system of verifiable procedures to evidence compliance with paragraph (4). Proposed §153.45(4)(G) explains that lenders may use a Spanish translation of the refinance disclosure that will be posted on the Finance Commission's webpage. These provisions are based on interpretations for the 12-day consumer disclosure in current

§153.12 and §153.51. The agencies have circulated an initial draft Spanish translation of the refinance disclosure to stakeholders, and intend to post a final version to the Finance Commission's webpage once it is finalized.

One precommenter suggested specifying that a home equity line of credit may be refinanced as a non-home-equity loan under Section 50(f)(2). The commissions believe that this addition is unnecessary. Home equity lines of credit are a type of home equity loan under Section 50, and are subject to the same requirements as other home equity loans unless the constitution specifies otherwise. Adding the precommenter's suggested language could raise other questions about whether home equity lines of credit are subject to general requirements for home equity loans.

In addition to the amendments discussed previously, SJR 60 adds Section 50(f-1), stating: "An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met." When the agencies circulated the initial precomment draft of the amendments, the agencies asked whether an interpretation is needed regarding the content of the affidavit and the manner of its execution. The agencies received mixed responses on this issue. One precommenter recommends an interpretation on what would satisfy the affidavit provision. Another precommenter states that the commissions should not adopt an interpretation on this issue "because an affidavit is defined by §312.011(1), Chapter 312, Government Code, and the manner of its execution is subject to subsection 50(a)(6)(N)." This same precommenter recommends "that the Commissions propose an Interpretation to address the cure of a defective (f)(2) refinance pursuant to their authority under Subsection (u) to interpret Subsections (a)(6) and (f)," but the precommenter does not identify the constitutional basis for the cure or what the cure should entail. At the stakeholder meeting, one attendee stated that the commissions did not necessarily need to promulgate the affidavit, but the attendee believed it would be helpful to have a title for the affidavit. The agencies intend to monitor this issue to determine whether an interpretation is appropriate.

The proposed amendments to §153.84 and §153.86, together with the repeal of §153.87, implement SJR 60's amendments to Section 50(t)(6). As discussed previously, SJR 60 amends Section 50(t)(6) by removing the 50% limitation on additional debits or advances for a home equity line of credit. Proposed amendments to §153.84 and §153.86 remove references to the 50% limitation in Section 50(t)(6) while maintaining references to the overall 80% loan-to-value limitation in Sections 50(a)(6)(B) and 50(t)(5), which SJR 60 did not amend. Section 153.87 is proposed for repeal because it relates solely to the 50% limitation that SJR 60 removes.

One precommenter recommends that the commissions issue an interpretation of SJR 60's temporary provision, which states that SJR 60's changes apply to a home equity loan made on or after January 1, 2018, and that the temporary provision expires January 1, 2019. The precommenter recommends an interpretation specifying that the changes made by SJR 60 continue after January 1, 2019. The commissions believe that this interpretation is

unnecessary. The legislature clearly intended for the amendments in SJR 60 to continue in effect beyond December 31, 2018, and would have made a clearer statement if it intended for all of the amendments in SJR 60 to expire on December 31, 2018.

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments, new rule, and repeal are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposal is in effect, the public benefits anticipated as a result of the proposal will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the proposal. Any costs are imposed by SJR 60's amendments to the constitution, and are not imposed by the proposal. There will be no effect on individuals required to comply with the proposal.

The commissions are not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the proposal, the commissions invite comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, or rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, or rural communities.

During the first five years the proposal will be in effect, the proposal will not create or eliminate a government program. Implementation of the proposal will not require the creation of new employee positions or the elimination of existing employee positions. The proposal does not require an increase or decrease in fees paid to the agencies or the commissions. The proposal creates a new interpretation at §153.45, regarding the refinance disclosure. The proposal amends §§153.1, 153.5, 153.14, 153.17, 153.84, and 153.86, resulting in certain requirements that are expanded and certain requirements that are limited, as discussed previously in this proposal. The proposal repeals the current interpretation at §153.87. The proposal does not increase or decrease the number of individuals subject to the home equity interpretations in Chapter 153. To the extent that there is any change in the number of individuals subject to the interpretations, the change is a result of SJR 60's amendments to Section 50(a)(6)(P), and does not result from the proposal. The commissions do not anticipate that the proposal will have an effect on the state's economy. The commissions anticipate that any effect on the state's economy will be a result of SJR 60's amendments to the constitution, and will not result from the proposal.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601

North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the Texas Register, no further written comments will be considered or accepted by the commissions.

The amendments, new section, and repeal are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §11.308 and §15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the proposed amendments, new section, and repeal are contained in Article XVI, Section 50 of the Texas Constitution.

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (14) (No change.)

(15) Two [~~Three~~] percent limitation--the limitation on fees in Section 50(a)(6)(E).

§153.5. Two [~~Three~~] percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two [~~three~~] percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the two [~~three~~] percent [~~fee~~] limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the two [~~three~~] percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the two [~~three~~] percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the two [~~three~~] percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the two [~~three~~] percent limitation.

(A) Per diem interest is interest and is not subject to the two [~~three~~] percent limitation.

(B) Bona fide [~~Legitimate~~] discount points are interest and are not subject to the two [~~three~~] percent limitation. Discount points are bona fide [~~legitimate~~] if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are bona fide [~~legitimate~~]. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating an equity loan are fees subject to the two [~~three~~] percent limitation. For example, these charges include attorneys' fees for document preparation to the extent authorized by applicable law. Charges that [~~those~~] third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two [~~three~~] percent limitation. [~~Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.~~]

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the two [~~three~~] percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, [~~survey,~~] flood zone determination, tax certificate, [~~title report,~~] inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the two [~~three~~] percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the two [~~three~~] percent limitation. Examples of these charges include title insurance and mortgage insurance protection, unless the premiums are otherwise excluded under paragraph (15) of this section.

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(11) of this title are fees subject to the two [~~three~~] percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) Exclusion for Appraisal Fee. A fee for an appraisal performed by a third party appraiser is not a fee subject to the two percent limitation. The appraisal must be performed by a person who is not an employee of the lender. The excludable appraisal fee is limited to the amount paid to the appraiser for the completion of the appraisal, and does not include an appraisal management services fee described by Texas Occupations Code, §1104.158(a)(2).

(14) Exclusion for Property Survey Fee. A fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation. The property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071.

(15) Exclusion for Title Insurance Premium. A state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law is not a fee subject to the two percent limitation.

(A) The excludable premium is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance, plus authorized premiums for applicable endorsements.

(B) Any mortgagee policy for the equity loan must be provided by a company authorized to do business in this state.

(C) If additional premiums for endorsements are charged, the endorsements must be applicable to the mortgagee policy for the equity loan. Rules adopted by the Texas Department of Insurance govern the applicability of endorsements and the authorized amount of the premium for each endorsement.

(16) Exclusion for Title Examination Report Fee. A fee for a title examination report is not a fee subject to the two percent limitation if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(A) The excludable fee must be less than the applicable basic premium rate for title insurance published by the Texas Department of Insurance, not

including any additional premiums for endorsements.

(B) The fee for a title examination report may not be excluded from the two percent limitation if the equity loan is covered by a mortgagee policy of title insurance.

(C) The fee must comply with applicable law. If the equity loan is a secondary mortgage loan under Texas Finance Code, Chapter 342, then the fee is limited to a reasonable fee for a title examination and preparation of an abstract of title by an attorney who is not an employee of the lender, or a title company or property search company authorized to do business in this state, as provided by Texas Finance Code, §342.308(a)(1).

(17) [~~(13)~~] Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] may charge only those fees permitted in Texas Finance Code, [~~TEX. FIN. CODE,~~] §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~] and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Texas Finance Code, Chapter 342 [~~of the Texas Finance Code~~].

(18) [~~(14)~~] Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the two [~~three~~] percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(19) [~~(15)~~] Subsequent Events. The two [~~three~~] percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the two [~~three~~] percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(20) [~~(16)~~] Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the two [~~three~~] percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must

comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) (No change.)

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

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

(D) The two percent limitation [~~3% fee cap~~] required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

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

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

(1) - (2) (No change.)

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

(4) (No change.)

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

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection

(a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) One Year Prohibition. To meet the condition in Section 50(f)(2)(A), the refinance may not be closed before the first anniversary of the closing date of the equity loan. For purposes of this section, the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance.

(2) Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinanced extension of credit may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

(A) Actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs.

(B) Reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.

(3) 80 Percent Limitation on Loan Amount. To meet the condition in Section 50(f)(2)(C), the refinance of the extension of credit must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made.

(A) The principal amount of the refinance is the sum of the amount advanced and any charges at the inception of the refinance, to the extent these charges are financed in the principal amount of the refinance.

(B) The principal balance of all outstanding debt secured by the homestead on the date the refinance is made determines the maximum principal amount of the refinance.

(C) The principal amount of the refinance does not include interest accrued after the date the refinance is made (other than any interest capitalized and added to the principal balance on the date the refinance is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

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

(A) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender. A loan application may be given orally or electronically.

(B) For purposes of determining the earliest permitted closing date, the next succeeding calendar day after

the date that the lender provides the owner a copy of the required refinance disclosure is the first day of the 12-day waiting period. The refinance may be closed at any time on or after the 12th calendar day after the lender provides the owner a copy of the required refinance disclosure.

(C) If a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(D) One copy of the required refinance disclosure may be provided to married owners.

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

(F) A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

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

§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited include prearranged drafts, preprinted checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) the advance requirements in Section 50(t)(2); and

(B) the loan to value limits in Section 50(t)(5). [~~; and~~]

[~~(C) the debit or advance limits in Section 50(t)(6).~~]

(2) - (3) (No change.)

§153.86. Maximum Principal Amount Extended under a HELOC: Section 50(t)(5).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the

maximum principal amount that may be extended under the account, when added to the aggregated total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, cannot exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made.

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

(4) For purposes of calculating the maximum principal balance [~~limits and thresholds~~] under Section 50(t)(5) [~~and (6)~~], the outstanding principal balance of all other debts secured by the homestead is the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

§153.87. Maximum Principal Amount of Additional Advances under a HELOC: Section 50(t)(6). **{{Section 153.87 will be repealed.}}**

Certification

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on November 3, 2017.

Harold E. Feeney
Credit Union Department Commissioner
Joint Financial Regulatory Agencies

C. (n) Discussion and Consideration on Potential Rules to Implement HB 471 (Proposition 7 on the November 7 Ballot)

BACKGROUND: HB 471 is the enabling legislation for HJR 37 (Proposition 7), which, if approved by the voters on November 7, would allow credit unions and other financial institutions to hold savings promotion raffles, where individuals could enter the raffle by depositing a certain amount of money in a savings account or other savings program.

Accounts eligible for a savings promotion raffle would have to have certain characteristics commensurate with comparable accounts that were not eligible for the raffle. Fees, premiums, withdrawal limits, and interest or dividends would have to be consistent between eligible and ineligible accounts.

HB 471 would take effect on the date that Proposition 7 is approved by the voters. If the proposition is not approved by the voters, HB 471 would have no effect.

If HB 471 takes effect, the Commission will be required to adopt rules to enforce the provisions of the bill.

RECOMMENDED ACTION: This is a discussion item only. No action by the Committee is anticipated.

AN ACT

relating to permitting credit unions and other financial institutions to award prizes by lot to promote savings.

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

SECTION 1. The legislature finds that:

(1) many Texans have little experience with mainstream financial services, such as checking and savings accounts;

(2) an estimated one in three households in the state does not have a savings account and an estimated one-half of all households in the state do not have sufficient savings to pay for basic expenses for three months in case of an emergency;

(3) Texans' inexperience with mainstream financial services and lack of savings has many negative consequences, including causing financially vulnerable Texans to turn to predatory lenders outside of the mainstream financial system for credit;

(4) mainstream financial institutions in states across the country offer savings promotion raffles to help familiarize people with the mainstream financial system and to encourage people to open savings accounts and to save money;

(5) savings promotion raffles are normal financial products offered by mainstream financial institutions, like traditional savings accounts, with the added feature of offering

(6) savings promotion raffles are not lotteries but are pro-savings alternatives to lotteries;

(7) unlike lotteries, savings promotion raffles do not require consideration for the chance to win a prize;

(8) unlike lotteries, savings promotion raffles have the purpose and effect of increasing an individual's savings and financial security; and

(9) encouraging people to save money is in the interest of the state.

SECTION 2. Subchapter B, Chapter 622, Business & Commerce Code, is amended by adding Section 622.0545 to read as follows:

Sec. 622.0545. SAVINGS PROMOTION RAFFLE. This chapter does not apply to a savings promotion raffle authorized under Chapter 280, Finance Code.

SECTION 3. Subtitle Z, Title 3, Finance Code, is amended by adding Chapter 280 to read as follows:

CHAPTER 280. SAVINGS PROMOTION RAFFLE

Sec. 280.001. SHORT TITLE. This chapter may be cited as the Texas Savings Promotion Act.

Sec. 280.002. DEFINITIONS. In this chapter:

(1) "Credit union" means:

(A) a credit union as defined by Section 121.002; or

(B) a federal credit union doing business in this state.

(2) "Deposit," with respect to a financial

(3) "Finance commission" means the Finance Commission of Texas.

(4) "Financial institution" has the meaning assigned by Section 31.002.

(5) "Savings promotion raffle" means a raffle conducted by a credit union or financial institution in which the sole action required for a chance of winning a designated prize is the deposit of at least a specified amount of money in a savings account or other savings program offered by the credit union or financial institution.

Sec. 280.003. SAVINGS PROMOTION RAFFLE BY CREDIT UNION. (a) A credit union may conduct a savings promotion raffle if:

(1) each ticket or token representing an entry in the raffle has an equal probability of being drawn; and

(2) the raffle is conducted in a manner that:

(A) does not jeopardize the ability of the credit union to operate in a safe and sound manner; and

(B) does not mislead the credit union's members.

(b) A credit union may not require consideration for participation in a savings promotion raffle. A deposit of an amount of money in a savings account or other savings program that results in an entry in a savings promotion raffle is not consideration.

(c) A credit union may not require a person to pay a premium or fee for opening or using a savings account or other savings program that is subject to a savings promotion raffle, unless the premium or fee is commensurate with the premium or fee that the

accounts or savings programs that are not subject to a savings promotion raffle.

(d) A credit union may not limit the withdrawal of money from a savings account or other savings program that is subject to a savings promotion raffle, unless the withdrawal limits are commensurate with the withdrawal limits that the credit union imposes on comparable savings accounts or savings programs that are not subject to a savings promotion raffle. This subsection does not prohibit a credit union from requiring a deposit of an amount of money to remain in a savings account or other savings program for a certain period of time in order for the deposit to represent an entry in a savings promotion raffle.

(e) A credit union shall pay interest or dividends on a savings account or other savings program that is subject to a savings promotion raffle at a rate that is commensurate with the interest or dividend rate that the credit union pays on comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(f) A credit union that conducts a savings promotion raffle under this section shall maintain all records that the Credit Union Commission determines are necessary for the Credit Union Department to examine the raffle.

(g) The provisions of this section applicable to a credit union apply to an organization composed exclusively of credit unions.

(h) The Credit Union Commission shall adopt rules and

Sec. 280.004. SAVINGS PROMOTION RAFFLE BY FINANCIAL INSTITUTION. (a) A financial institution may conduct a savings promotion raffle if:

(1) each ticket or token representing an entry in the raffle has an equal probability of being drawn; and

(2) the raffle is conducted in a manner that:

(A) does not jeopardize the ability of the financial institution to operate in a safe and sound manner; and

(B) does not mislead the institution's depositors.

(b) A financial institution may not require consideration for participation in a savings promotion raffle. A deposit of an amount of money in a savings account or other savings program that results in an entry in a savings promotion raffle is not consideration.

(c) A financial institution may not require a person to pay a premium or fee for opening or using a savings account or other savings program that is subject to a savings promotion raffle, unless the premium or fee is commensurate with the premium or fee that the financial institution charges for opening or using comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(d) A financial institution may not limit the withdrawal of money from a savings account or other savings program that is subject to a savings promotion raffle, unless the withdrawal limits are commensurate with the withdrawal limits that the financial

programs that are not subject to a savings promotion raffle. This subsection does not prohibit a financial institution from requiring a deposit of an amount of money to remain in a savings account or other savings program for a certain period of time in order for the deposit to represent an entry in a savings promotion raffle.

(e) A financial institution shall pay interest or dividends on a savings account or other savings program that is subject to a savings promotion raffle at a rate that is commensurate with the interest or dividend rate that the financial institution pays on comparable savings accounts or savings programs that are not subject to a savings promotion raffle.

(f) A financial institution that conducts a savings promotion raffle under this section shall maintain all records that the finance commission determines are necessary for the financial regulatory agency of this state having regulatory jurisdiction over that financial institution to examine the raffle.

(g) The provisions of this section applicable to a financial institution apply to an organization composed exclusively of financial institutions.

(h) The finance commission shall adopt rules and procedures for the administration of this section.

Sec. 280.005. ACCOUNT OR DEPOSIT NOT CONSIDERATION. For purposes of Chapter 47, Penal Code, or other state law, opening or making a deposit in an account is not considered a purchase, payment, or provision of a thing of value for participation in a savings promotion raffle and is not considered to require a

SECTION 4. Subchapter A, Chapter 2002, Occupations Code, is amended by adding Section 2002.005 to read as follows:

Sec. 2002.005. APPLICABILITY. This chapter does not apply to a savings promotion raffle authorized under Chapter 280, Finance Code.

SECTION 5. Section 47.09(a), Penal Code, is amended to read as follows:

(a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

(A) Chapter 2001, Occupations Code;

(B) Chapter 2002, Occupations Code;

(C) Chapter 2004, Occupations Code; [~~or~~]

(D) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); or

(E) Chapter 280, Finance Code;

(2) consisted entirely of participation in the state lottery authorized by Chapter 466, Government Code; or

(3) was a necessary incident to the operation of the state lottery and was directly or indirectly authorized by:

(A) Chapter 466, Government Code;

(B) the lottery division of the Texas Lottery Commission;

(C) the Texas Lottery Commission; or

(D) the director of the lottery division of the Texas Lottery Commission.

Section 47.11 to read as follows:

Sec. 47.11. DEPOSITS IN CERTAIN ACCOUNTS NOT CONSIDERATION. For purposes of this chapter, opening or making a deposit in a savings account or other savings program subject to a savings promotion raffle under Chapter 280, Finance Code, does not constitute consideration.

SECTION 7. This Act takes effect on the date the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

President of the Senate

Speaker of the House

I certify that H.B. No. 471 was passed by the House on May 4, 2017, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 471 was passed by the Senate on May 19, 2017, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

NEXT MEETING AND ADJOURNMENT

C. (o) Discussion of and Vote to Establish Date for Next Committee Meeting.

BACKGROUND: If necessary, the next regular meeting of the Committee will be scheduled for March 8, 2018, at 1:00 p.m. in Austin.

ADJOURNMENT