



CREDIT UNION COMMISSION

Rules Committee Meeting

(via audio/videoconference)

Austin, Texas

Thursday, March 4, 2021

1:00 p.m.

AGENDA

Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, this meeting of the Texas Credit Union Commission will be held via telephone/videoconference call, as authorized under Texas Government Code Sections 551.125/551.127.

Members of the public will have access and a means to participate in this meeting, by two-way audio or video conference. Members wishing to attend the meeting will find a link to the meeting on the Department's webpage at www.cud.texas.gov on the day of the meeting.

An electronic copy of the agenda is now available at www.cud.texas.gov under Credit Union Commission, Commission Meetings, along with a copy of the meeting materials. A recording of the meeting will be available after March 12, 2021. To obtain a recording, please contact Isabel Velasquez at 512-837-9236.

For public participants, after the meeting convenes, the Chairperson will call roll. Please identify yourself by name and state whether you would like to provide public comment. You may also email isabel.velasquez@cud.texas.gov in advance of the meeting if you would like to provide public comment. When the Board reaches the public comment item, the Chairperson will recognize you by name and give you an opportunity to speak. All public comments will be limited to five minutes.

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

<u>TAB</u>		<u>PAGE</u>
A.	Call to Order (1:00 p.m.) – Committee Chair Steve Gilman	2
	a. Ascertain Quorum	
	b. Appoint Recording Secretary	
	c. Invitation for Public Input Regarding Rulemaking for Future Consideration	
B.	Receive and Approve Minutes of the Rules Committee Meeting of July 12, 2018	5

<u>TAB</u>	<u>PAGE</u>
C. Rulemaking Matters	
(a) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter A (General Provisions), Sections 97.101, 97.102, 97.103, 97.105 and 97.107, and Re-adoption of Rules	17
(b) Adoption of the Rule Review and Re-adoption of 7 TAC, Part 6, Chapter 97, Subchapter B (Fees), Sections 97.113, 97.114, 97.115 and 97.116, and Re-adoption of Rules	21
(c) Adoption of the Rule Review and Re-adoption of 7 TAC, Part 6, Chapter 97, Subchapter C (Department Operations), Sections 97.200, 97.205, 97.206 and 97.207, and Re-adoption of Rules	28
(d) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter D (Gifts and Bequests), Section 97.300, and Re-adoption of Rules	34
(e) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter E (Advisory Committees), Section 97.401, and Re-adoption of Rules	37
(f) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter F (Rulemaking), Sections 97.500, 97.501, and Re-adoption of Rules	41
(g) Proposed New Rule 7 TAC, Part 6, Chapter 91, Subchapter H Section 91.809 (Purchase of Assets and Assumption of Liabilities)	44

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. The committee may meet in closed session on any agenda item if authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551.

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

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

A

CALL TO ORDER

CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- *Steven “Steve” Gilman, Chair*
- *Karyn C. Brownlee, Vice Chair*
- *David F. Shurtz*
- *Kay Rankin-Swan*
- *Yusuf E. Farran, Ex-Officio*

Legal Counsel

- *Melissa Juarez*

Staff

- *John J. Kolhoff*
- *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.

B

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on July 12, 2018, 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 12, 2018, meeting be approved as presented.

**TEXAS CREDIT UNION COMMISSION
RULES COMMITTEE MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane
Austin, Texas
July 12, 2018**

A. CALL TO ORDER – Chairwoman Kay Stewart called the meeting to order at 1:03 p.m. in the conference room of the Credit Union Department Building, Austin, Texas pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Other committee members present included Yusuf Farran, Steven “Steve” Gilman, and Commission Chair Allyson “Missy” Morrow, ex-officio member. Rick Ybarra was absent. Commission Members Liz Bayless, Beckie Stockstill Cobb, and Sherri Merket were in attendance; however, they did not participate in the discussion or vote on any items during this meeting. Assistant Attorney General Melissa Juarez was present and served as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner; and Isabel Velasquez, Executive Assistant. Chairwoman Stewart appointed Isabel Velasquez as recording secretary. The Chair inquired, and the Commissioner confirmed that the notice of the meeting was properly posted in the *Texas Register* (July 2, 2018, TRD#2018006347).

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

B. RECEIVE MINUTES OF PREVIOUS MEETING (November 2, 2017)

Mr. Farran moved to approve the minutes of November 2, 2017 as presented. Mr. Gilman seconded the motion, and the motion was unanimously adopted.

C. NEW BUSINESS

(a) **Recommendation that the Credit Union Commission Adopt Amendments, a New Section and Three Repeals in 7 TAC, Part 6, Chapter 93 Concerning Administrative Proceedings.** Commissioner Feeney explained that the amendments would implement changes resulting from the Commission's review of Chapter 93 under the Texas Government Code Section 2001.039. He noted that the amendments relate to four areas: (1) consistency with the Administrative Procedure Act Texas Government Code, Chapter 2001 (APA), (2) consistency with the State Office of Administrative Hearings (SOAH) procedural rules, (3) better readability and clarification, and (4) technical corrections. Mr. Feeney reported that no comments were received on the proposal during the comment period.

Mr. Gilman moved to recommend that the Commission adopt the amendments to **7 TAC, Part 6, Chapter 93, Sections 93.101, 93.204, 93.205, 93.208, 93.209, 93.210, 93.211, 93.212, 93.301, 93.303, 93.401, 93.501, 93.604 and 93.605; adopt new 7 TAC Section 93.201; and adopt the repeal of existing 7 TAC Sections 93.201, 93.206, and 93.601** as previously published in the *Texas Register*. Mr. Farran seconded the motion and the motion was unanimously adopted.

(b) **Recommendation that the Credit Union Commission Adopt the Completed Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter G Concerning Lending Powers.** Commissioner Feeney indicated that at its July 2016 meeting, the Commission approved a plan which established a date for the required review of each rule in accordance with Section 2001.039, Government Code. He reported that staff had reviewed **7 TAC, Part 6, Chapter 91, Subchapter G (Lending Powers)** in accordance with the Plan and believes that certain revisions are appropriate and necessary. Mr. Feeney noted that the recommended amendments to Chapter 91, Subchapter G would be presented separately for consideration. He explained that notice of review and a request for comments on these rules were

published in the April 20, 2018 issue of the *Texas Register* and that no comments were received. Mr. Feeney further indicated that staff believes that the reasons for adopting these rules continue to exist and the rules should be readopted.

Mr. Gilman moved to recommend that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 91, Subchapter G (Lending Powers)** continue to exist and, subject to the separately proposed amendments, that the Committee recommend the re-adoption of the rules in this chapter. Mr. Farran seconded the motion and the motion was unanimously adopted.

(c) Recommendation that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.709 Concerning Member Business and Commercial Loans. Commissioner Feeney explained that as a result of the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act, (S. 2155, 115th Cong. (2018)) NCUA had made changes to its Member Business Lending regulation (Part 723) that removes the member's occupancy requirement for loans secured by liens on 1- to 4-family dwellings. This change, however, does not apply to Texas-chartered credit union because they are exempt from compliance with Part 723 and are required to comply with 7 TAC Section 91.709. Existing Section 91.709 requires 1- to 4-family dwellings to be the primary resident of a member in order to be excluded from the definition of a member business loan. Therefore, unlike federal credit unions, loans secured by a non-owner occupied 1- to 4-family dwelling are considered to be member business loans and count towards the aggregate member business loan cap.

The propose amendments conform the rule to the recent changes in Part 723. In order to maintain the current exemption from NCUA's Part 723, Mr. Feeney noted that it will be necessary for the NCUA Board to also approve the proposed amendments.

After a brief discussion, Mr. Gilman moved to recommend that the Commission take action to approve for publication and comment the proposed amendments to **7 TAC Section 91.709** concerning member business and commercial loans. Mr. Farran seconded the motion and the motion was unanimously adopted.

(d) Recommendation that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.712 Concerning Plastic Cards. Commissioner Feeney indicated that this proposal will implement changes resulting from the Commission's review of Chapter 91, Subchapter G. The proposed amendments would permit a plastic card to be activated by logging on to the card issuer/processor's website to go through a member verification process. Currently, the rule limits the member verification process to a telephone verification process.

After a short discussion, Mr. Gilman moved to recommend that the Commission take action to approve for publication and comment the proposed amendments to **7 TAC Section 91.712** concerning plastic cards. Mr. Farran seconded the motion and the motion was unanimously adopted.

(e) Recommendation that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.121 Concerning Complaint Notification. Commissioner Feeney indicated that the proposal will prescribe the Department's procedures for handling complaints. The proposed amendments are intended to be explanatory in nature and generally relate to four areas: (1) how to file a complaint with the Department, (2) how a complaint is handled after receipt, (3) the authority of the Department in reviewing complaints, and (4) the privacy of information provided in a complaint.

✓ **Melodie Durst, Executive Director, Credit Union Coalition of Texas** thanked staff for working with the Industry in developing the proposal and expressed support for the rule change.

After a brief discussion, Mr. Gilman moved to recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.121 concerning complaint notices and procedures. Mr. Farran seconded the motion and the motion was unanimously adopted.

(f) Recommendation that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.403 Concerning Debt Cancellation Products; Federal Parity. Commissioner Feeney indicated that the Department has long opined that credit unions may enter into debt cancellation contracts to the same extent as federal credit unions. Interpretive rulings issued by the National Credit Union Administration (NCUA) found that a federal credit union may sell debt cancellation products to its member as an activity that is incidental to a federal credit union's expressed power of lending. Pursuant to the authority set forth in Finance Code Section 123.003, relating to enlargement of powers, a credit union may offer debt cancellation products. He explained that the proposed amendments would update the standards governing the offer and sale of debt cancellation products. Mr. Feeney noted that the proposed changes would amend subsection (a) to make clear that credit unions must comply with the Truth in Lending Act (15 U.S.C. 1601) and the applicable provisions of Regulation Z (12 C.F.R. Part 226); amend subsection (b) to remove language that could be construed to prohibit the offering of a no refund debt cancellation product in a manner that is permitted for federal credit unions; and, add a new subsection (f) that would adopt and incorporate by reference the guidance issued by NCUA in its Letter to Federal Credit Unions No. 03-FCU-06 and direct credit unions to look to 12 C.F.R. Part 37,

for guidance as to best practices related to the offer and sale of debt cancellation products.

✓ **Lonnie Nicholson, President, EECU** commended staff for providing clarity to such a complex subject. Mr. Nicholson also encouraged the Committee to consider some additional language relating to the proposed wording in subsection (f). After receiving clarification from the Committee's Legal Counsel, Mr. Nicholson withdrew his suggestion.

✓ **Jeff Huffman, President, Texas Credit Union Association** expressed appreciation to Staff for proposing the elimination of the language in subsection (b) to permit "no refund" debt cancellation products and for providing guidance as to best practices.

After a short discussion, Mr. Gilman moved to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC Section 91.403** concerning debt cancellation products. Mr. Farran seconded the motion and the motion was unanimously adopted.

(g) Discussion of and Vote to Establish Date for Next Committee Meeting. Chairwoman Stewart noted that the next meeting is tentatively scheduled for November 1, 2018.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 1:39 p.m.

Steven “Steve” Gilman
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

DRAFT

C

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.

RULEMAKING MATTERS

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

- a. Adoption of Rule Review of **7 TAC, Part 6, Chapter 97, Subchapter A** (General Provisions).
- b. Adoption of Rule Review of **7 TAC, Part 6, Chapter 97 Subchapter B** (Fees).
- c. Adoption of Rule Review of **7 TAC, Part 6, Chapter 97, Subchapter C** (Department Operations).
- d. Adoption of Rule Review of **7 TAC, Part 6, Chapter 97, Subchapter D** (Gifts and Bequests).
- e. Adoption of Rule Review of **7 TAC, Part 6, Chapter 97, Subchapter E** (Advisory Committees).
- f. Adoption of Rule Review of **7 TAC, Part 6, Chapter 97, Subchapter F** (Rulemaking).
- g. Proposed New Rule **7 TAC, Part 6, Chapter 91, Subchapter H, Section 91.809** Concerning Purchase of Assets and Assumption of Liabilities.

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

MANDATORY RULE REVIEW

C. (a) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97 Subchapter A (General Provisions).

BACKGROUND: Section 2001.039, 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. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 97, Subchapter A (General Provisions) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 25, 2020 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 to the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC Chapter 97, Subchapter A (General Provisions) continue to exist and that Commission readopt the rules in this chapter.

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 97.	Commission Policies and Administrative Rules
Subchapter A.	General Provisions

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter A, concerning General Provisions consisting of §§97.101, 97.102, 97.103, 97.105 and 97.107 concerning Meeting, Delegation of Duties, Recusal or Disqualification of Commission Members, Frequency of Examination and Related Entities respectively.

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

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter A, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter A, §§97.101, 97.102, 97.103, 97.105 and 97.107 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

CHAPTER 97

Subchapter A. General Provisions

§97.101. Meetings.

The time and place of regular and special meetings of the Commission and its committees shall be determined by the applicable chair and posted in accordance with the Open Meetings Act (Government Code, Chapter 551). The minutes of each meeting shall be in writing, shall be posted on the Department's website, and shall be available to any person to examine during the Department's regular office hours.

§97.102. Delegation of Duties.

The Commissioner is authorized to complete all filings necessary to facilitate the rule making powers of the Commission. The Commissioner may draft and sign final adoption orders and other such instruments where delegation is not restricted by statute or rule. Notwithstanding other provisions of this rule, this authority is conveyed only to promote administrative efficiency and to expedite properly approved decisions of the Commission.

§97.103. Recusal or Disqualification of Commission Members.

- (a) A commission member may not vote on or otherwise participate in the deliberation or decision of a matter pending before the commission:
 - (1) in which the commission member has a personal or private interest; or
 - (2) which directly affects the credit union of which the commission member is an officer, director, or member.
- (b) The term "personal or private interest" shall be given the meaning as prescribed in Texas Government Code, Section 572.058, and includes a direct personal or financial interest in a credit union or other matter which is the subject of commission action.
- (c) A commission member who is disqualified under subsection (a) of this section shall publicly disclose the fact to the commission in a meeting called and held in compliance with the Open Meetings Act, Texas Government Code, Chapter 551. The disclosure shall be entered in the minutes of the meeting.
- (d) A commission member who is recused or disqualified will be counted in determining a quorum.

§97.105. Frequency of Examination.

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

commissioner in the exercise of discretion may accept examinations or reports from other credit union supervisory agencies or insuring organizations.

§97.107. Related Entities.

(a) **Definition.** For the purposes of this section, a related entity is defined as:

1. a credit union service organization in which a credit union has a material interest by contracting with, lending to or investing in the organization;
2. a subsidiary or affiliate of a credit union service organization that is wholly owned or controlled by a credit union;
3. an organization engaged primarily in the business of managing a credit union; and
4. third-party contractors providing electronic data processing, electronic fund transfers, or other member services to or on behalf of a credit union.

(b) **General Supervision.** A credit union should perform a thorough analytical assessment to identify, measure, monitor, and establish controls to manage the risks associated with related entities and avoid excessive risk-taking that may threaten the safety and soundness of a credit union. The department may review the risks associated with any related entity and its activities together with other credit union risks using its supervision-by-risk framework. The department shall assess the effectiveness of a credit union's oversight program of related entities, including its strategic planning, third-party selection process, and ongoing monitoring.

(c) **Examination.** A credit union's use of related entities to achieve its strategic goals does not diminish the responsibility of the department to ensure that the activity is conducted in a safe and sound manner and in compliance with applicable law. Although in most situations, these activities should be conducted in the same manner that would be expected if the credit union were conducting the activities directly, the department shall consider the following factors in determining whether to examine exam related entities:

1. the high risk or unusual nature of the activities conducted by the related entity for the credit union;
 2. the significance of the activities conducted by the related entity for the credit union to the credit union's operations and income; and
 3. the extent to which the credit union has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the related entity.
- The department may examine a related entity, as the commissioner deems necessary to ensure that a credit union is not assuming excessive risk.

(d) **Examination Fee.** The related entity shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). A credit union may elect to pay the fee on behalf of the related entity. The supplemental examination fee for a related entity may be waived or reduced if the commissioner determines it is appropriate.

MANDATORY RULE REVIEW

C. (b) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter B (Fees).

BACKGROUND: Section 2001.039, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 97, Subchapter B (Fees) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 25, 2020 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 to the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC Chapter 97, Subchapter B (Fees) continue to exist and that Commission readopt the rules in this chapter.

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 97.	Commission Policies and Administrative Rules
Subchapter B.	Fees

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter B, concerning Fees consisting of §§97.113, 97.114, 97.115, and 97.116 concerning Fees and Charges, Charges for Public Records, Reimbursement of Legal Expenses and Recovery of Costs for Extraordinary Services Not Related to an Examination, respectively.

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

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter B, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter B, §§97.113, 97.114, 97.115, and 97.116 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter B. Fees

§97.113. Fees and Charges.

(a) Remittance of fees.

(1) Each credit union authorized to do business under the Act shall remit to the department an annual operating fee. The fee shall be paid in semi-annual installments, billed effective September 1 and March 1 of each year. The final installment may be adjusted as provided by subsection (d) of this section. Installments received after September 30 or March 30 of each year will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(2) Credit unions that exit the Texas credit union system on or before August 31 or February 28 of a given year, will not be subject to the semi-annual assessment for the period beginning September 1 or March 1, respectively. Only those credit unions leaving the state credit union system prior to the close of business on those dates avoid paying the semi-annual assessment for the period beginning September 1 or March 1, as applicable.

(b) Calculation of operating fees. The schedule provided in this section shall serve as the basis for calculating operating fees. The base date shall be June 30 of the year in which operating fees are calculated. The asset base may be reduced by the amount of reverse-repurchase balances extant on the June 30 base date. The commissioner is authorized to increase the fee schedule once each year as needed to match revenue with appropriations. An increase greater than 5% shall require prior approval of the commission. The commissioner shall notify the commission of any such adjustment at the first meeting of the commission following the determination of the fee schedule.

For Credit Unions with Total Assets Of:

The Operating Fee is:

Less than \$200,000	\$200
\$200,000 but less than \$1M	\$200 plus .001625 of excess over \$200,000
\$1M but less than \$10M	\$1,500 plus .00034 of excess over \$1M
\$10M but less than \$25M	\$4,560 plus .00014 of excess over \$10M
\$25M but less than \$50M	\$6,660 plus .00017 of excess over \$25M
\$50M but less than \$100M	\$10,910 plus .00019 of excess over \$50M
\$100M but less than \$500M	\$20,410 plus .000080 of excess over \$100M

\$500M but less than \$1,000M	\$52,410 plus .000072 of excess over \$500M
\$1,000M but less than \$2,000M	\$88,410 plus .000069 of excess over \$1,000M
\$2,000M and over	\$157,410 plus .000062 of excess over \$2,000M

(c) Waiver of operating fees. The commissioner is authorized to waive the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver of operating fees and report such waiver to the commission at its next meeting.

(d) Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of actual revenues to date and projected revenues for the remainder of the fiscal year, lower the amount of the final installment due from credit unions.

(e) Supplemental examination fees.

(1) If the commissioner or deputy commissioner schedules a special examination in addition to the regular examination, the credit union is subject to a supplemental charge to cover the cost of time and expenses incurred in the examination.

(2) The credit union shall pay a supplemental fee of \$50 for each hour of time expended on the examination. The commissioner may waive the supplemental fee or reduce the fee, individually or collectively, as he deems appropriate. Such waiver or reduction shall be in writing and signed by the commissioner. The department shall fully explain the time and charges for each special examination to the president or designated official in charge of operations of a credit union.

(f) Foreign credit union branches. Credit unions operating branch offices in Texas as authorized by §91.210 of this title (relating to Foreign Credit Unions) shall pay an annual operating fee of \$500 per branch office.

(g) Credit union conversion fee. A credit union organized under the laws of the United States or of another State that converts to a credit union organized under the laws of this State shall remit to the department an annual operating fee within 30 days after the issuance of a charter by the commissioner. The schedule provided in subsection (b) of this section shall serve as the basis for calculating the operating fee. All provisions set forth in subsection (b) of this section shall apply to converting credit unions with the following exceptions:

(1) Should the effective date of the conversion fall on or after October 31, the base date shall be the calendar quarter end immediately preceding the issuance date of a charter by the commissioner.

(2) The amount of the operating fee calculated under this section will be prorated based upon the number of full months remaining until September 1. For example, should the effective date of the conversion be January 31, the converting credit union will remit seven-twelfths of the amount of the operating fee calculated using December 31 base date.

(3) Any fee received more than 30 days after the issuance of a charter will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(h) Mergers/Consolidations. In the event a credit union in existence as of June 30 merges or consolidates with another credit union and the merger/consolidation is completed on or before August 31, the surviving credit union's asset base, for purposes of calculating the operating fee

prescribed in subsection (b) of this section, will be increased by the amount of the merging credit union's total assets as of the June 30 base date.

(i) Special assessment. The commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

(j) Foreign credit union fee for field of membership expansion. A foreign credit union applying to expand its field of membership in Texas shall pay a fee of \$200. This fee shall be paid at the time of filing to cover the cost of processing the application. In addition, the applicant shall pay any cost incurred by the department in connection with a hearing conducted at the request of the applicant.

(k) Foreign credit union examination fees.

(1) If the commissioner schedules an examination of a foreign credit union, the credit union is subject to supplemental charges to cover the cost of time and expenses incurred in the examination.

(2) The foreign credit union shall pay a fee of \$50 for each hour of time expended by each examiner on the examination. The commissioner may waive the examination fee or reduce the fee as he deems appropriate.

(3) The foreign credit union shall also reimburse the department for actual travel expenses incurred in connection with the examination, including mileage, public transportation, food, and lodging in addition to the fee set forth in paragraph (2) of this subsection. The commissioner may waive this charge at his discretion.

(l) Contract Services. In addition, the commissioner may charge, or otherwise cause to be paid by, a credit union, a foreign credit union or related entities the actual cost incurred by the department for an examination or a review of all or part of the operations or activities of a credit union, a foreign credit union or related entity that is performed under a personal services contract entered into between the department and third parties.

Source: The provisions of this §97.113 adopted to be effective November 13, 2000, 25 TexReg 11279; amended to be effective December 9, 2001, 26 TexReg 9777; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4514; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

§97.114. Charges for Public Records.

(a) Reproduction Charges. Copies of documents not excepted from disclosure by the Texas Public Information Act (Government Code, Chapter 552) may be obtained upon written request to the department at rates established by the Office of the Attorney General in 1 TAC Sections §§70.1-70.12 (relating to Cost of Copies of Public Information) or other applicable law.

(b) Request for Information. The following guidelines apply to requests for records under the Public Information Act (Government Code, Chapter 552).

(1) Request must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the department.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided only the option of receiving copies by duplication.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication unless required by a court order or Attorney General decision.

(c) Waiver of Fees or Charges. The commissioner may waive or reduce an established charge when, in his or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public. The fee may also be waived if the cost of processing the collection of a charge will exceed the amount of the charge.

Source: The provisions of this §97.114 adopted to be effective September 1, 1994, 19 TexReg 6557; amended to be effective December 9, 2001, 26 TexReg 9778; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4515; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

§97.115. Reimbursement of Legal Expenses.

(a) The commissioner may seek reimbursement of expenses from an individual credit union for legal fees incurred solely and necessarily because the credit union acted in an unreasonable or egregious manner or acted outside the course and scope of what is permitted by statute or regulation. To ensure that the rights and interest of all parties are protected, this section shall not apply to any adjudicative proceedings in which the legal rights, duties, or privileges of the credit union are being determined by the Department after an opportunity for hearing. This section also does not apply to court proceedings where the individual credit union's legal rights, duties, or privileges are being determined as against the Department.

(b) The credit union has thirty days from the date it receives the assessment to pay in full or to appeal in writing to the Commission.

(c) If a credit union files a written notice of appeal, the Commission shall hear the appeal at its next regularly scheduled meeting. In making its decision, the Commission shall consider whether the credit union acted reasonably under the circumstances or acted within its legal rights.

(d) When possible, the Department will notify a credit union before the Department requests legal assistance which may be charged to a credit union under this section.

Source: The provisions of this §97.115 adopted to be effective November 7, 2010, 29 TexReg 9722; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

§97.116. Recovery of Costs for Extraordinary Services Not Related to an Examination.

(a) The commissioner may seek reimbursement from an individual credit union for non examination-related expenses incurred solely and necessarily because the credit union acted in an unreasonable or egregious manner, or acted outside the course and scope of what is permitted by statute or regulation. Expenses can include personnel costs, transportation costs, meals, lodging, and other incidental expenses. If the commissioner determines that recovery of costs is appropriate, the Department shall provide advance notice to the credit union of its intention to recover the expenses.

(b) In seeking reimbursement, the commissioner shall consider the amount of the costs involved, the nature of the credit union's conduct, the service provided, the financial impact on the credit union, and the impact of the activity on other Department services. The commissioner may reduce the charges and bill the credit union less than the full amount of the costs.

(c) The credit union has thirty days from the date it receives the assessment to pay in full or to appeal in writing to the Commission.

(d) If a credit union files a written notice of appeal, the Commission shall hear the appeal at its next regularly scheduled meeting. In making its decision, the Commission shall consider whether the credit union acted reasonably under the circumstances or acted within its legal rights.

Source: The provisions of this §97.116 adopted to be effective November 7, 2010, 35 TexReg 9723; readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and readopted to be effective March 10, 2017, 42 TexReg 1603.

MANDATORY RULE REVIEW

C. (c) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter C (Department Operations).

BACKGROUND: Section 2001.039, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 97, Subchapter C (Department Operations) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 25, 2020 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 to the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC Chapter 97, Subchapter C (Department Operations) continue to exist and that Commission readopt the rules in this chapter.

TITLE 7. BANKING AND SECURITIES
Part 6. Credit Union Department
Chapter 97. Commission Policies and Administrative Rules
Subchapter C. Department Operations

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter C, concerning Department Operations consisting of §§97.200, 97.205, 97.206, and 97.207 concerning Employee Training Program, Use of Historically Underutilized Business, Posting of Certain Contracts: Enhanced Contracts and Performance Monitoring and Contracts for Professional or Personal Service, respectively.

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

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter C, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter B, §§97.200, 97.205, 97.206, and 97.207 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter C. Department Operations

§97.200. Employee Training Program.

(a) Components of program. The employee training program for the department consists of one or more of the following components:

(1) Agency-sponsored training to include in-house training sessions and on-the-job training;

(2) Formal training program conducted through the National Credit Union Administration as administrator of the National Credit Union Share Insurance Fund.

(3) Seminars and conferences; and

(4) Formal course of study at an accredited institution of higher education.

(b) In order for the cost of training and the time related to that training to be reimbursed by the department, the employee must demonstrate that the course has direct applicability to the employee's job with the department. Attendance at an approved training session described in subsection (a)(1)-(3) will be considered part of the employee's normal work duties and will not require the employee to use accrued leave to attend.

(c) Requests to attend an external training program, seminar or conference pursuant to this section must be approved by the commissioner. Approval of a request is contingent upon availability of funds. If limited funds are available, and more than one employee wishes to participate, a decision regarding who will attend will be based upon the extent of their previous use of funds, the training's merit and its value to the department's operations.

(d) Continuing education courses. Continuing education courses required by licensing or certifying bodies for employees to maintain a professional license or designation will only be reimbursed if such courses relate directly to the employee's job duties with the department and there are funds available.

(e) Tuition reimbursement. The Commissioner must authorize in writing the reimbursement of tuition in accordance with this subsection.

(1) The department may reimburse full-time employees for part or all of tuition and required fees for formal courses of study described in subsection (a)(4) provided the eligibility criteria set forth below are met.

(A) An employee must have completed 24 consecutive months of full-time employment with the department prior to requesting approval to receive tuition reimbursement. However, the 24-month requirement may be waived if the commissioner finds that the employee needs a particular course to fulfill his or her work duties.

(B) An employee must be performing consistently above that normally expected or required and must have achieved an overall performance rating of at least 3.50 on the employee's most recent performance evaluation.

(C) An employee must not have been subject to formal disciplinary action for at least twelve months prior to requesting approval. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

(D) The course work must be related to a current or prospective duty assignment within the department.

(E) An employee, before the course begins, must agree in writing to the repayment requirement stated in this subsection.

(F) At the time of the request for approval to receive tuition reimbursement, comparable training must not be scheduled to be offered in-house or through the National Credit Union Administration during the period of time covered by the tuition reimbursement.

(G) The employee's participation must not adversely affect workload or performance.

(H) The employee must complete the course within the semester for which tuition reimbursement was requested.

(I) The employee must receive a passing grade in the course. A passing grade is a grade which will entitle the employee to receive credit for the course from the educational institution offering the course.

(2) Reimbursable costs. Criteria addressing the extent to which cost of tuition may be reimbursed are as follows:

(A) The maximum amount an employee may be reimbursed for an approved tuition reimbursement request is \$250 per semester, not to exceed \$500 per fiscal year. The maximum amount of reimbursement may be increased up to \$400 per semester for good cause shown upon approval by the commissioner.

(B) Reimbursable costs include tuition, related fees, and required textbooks and workbooks. Employees will not be reimbursed for auditing a course.

(C) Costs described in subparagraph (B) of this paragraph will be paid to the employee at the completion of the course upon the employee submitting proof that the course was completed and a passing grade was received.

(3) Repayment. Should an employee separate from department service within 12 months of completion of the course, the employee must reimburse the department for all reimbursable costs expended by the department for that course in accordance with section 656.103 of the Texas Government Code (relating to Restrictions on Certain Training Costs). The commission may adopt an order waiving this requirement upon finding that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee.

(4) Prohibition on use of state resources. Employees may not use department equipment, such as computers, calculators or typewriters to complete course work.

§97.205. Use of Historically Underutilized Businesses.

Pursuant to Chapter 2161 of the Government Code, the Department hereby incorporates by reference the rules of the Comptroller of Public Accounts, 34 TAC §§20.11-20.28 (relating to Historically Underutilized Business Program), or any successor rules, regarding historically underutilized businesses. The Department shall comply, to the extent applicable, with the requirements of these rules when purchasing goods and services that are paid for with State appropriated money.

§97.206. Posting Of Certain Contracts: Enhanced Contracts And Performance Monitoring.

(a) Pursuant to section 2261.253 of the Texas Government Code, the Department will implement the following procedures for contracts for the purchase of goods or services from private vendors:

(1) The Department will list information pertaining to its contract with private vendors on its website. The information will include:

(A) The name of the vendor with whom the contract is made;

(B) A description of the competitive bidding process for the contract, or, if the contract did not involve competitive bidding, a citation and explanation of the legal authority supporting exemption from the competitive bidding process;

(C) A link to a copy of the request for proposal for the contract, if applicable until the contract expires or is completed; and

(D) A link to a copy of the contract with the vendor until the contract expires or is completed.

(2) Enhanced contract or performance monitoring procedure until the contract expires or is completed.

(A) For each contract whose value is greater than \$25,000, the Commissioner and the Department Procurement Director will evaluate whether enhanced contract or performance monitoring is appropriate. Criteria that may be considered include:

(i) Total cost of the contract.

(ii) Risk of loss to the Department under the contract.

(iii) Department resources available for enhanced contract or performance monitoring.

(B) After evaluation of the contract, the Commissioner will immediately report to the Commission Members:

(i) The basis for determination as to whether enhanced contract or performance monitoring is appropriate;

(ii) Include any serious issues or risks identified with the contract, if applicable; and

(iii) If enhanced contract or performance monitoring is appropriate, the Department's plan for carrying out the enhanced contract or performance monitoring.

(C) Commission members may agree to convene a special commission meeting for the purposes of discussion or deciding upon matters related to enhanced contract or performance monitoring of Department contracts. This meeting would be conducted in conformity with the Texas Open Meetings Act.

(b) This rule applies only to contracts for which the request for bids or proposals is made public on or after September 1, 2015; or, if the contract is exempt from competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memorandums of understanding, interagency contracts, interlocal agreements or contracts that do not involve a cost to the Department.

§97.207. Contracts for Professional or Personal Service.

(a) In connection with the authority granted to the commissioner to negotiate, contract or enter into an agreement for professional or personal services under §15.414, Texas Finance Code, the Department hereby incorporates by reference the procurement rules of the Comptroller of Public

Accounts, 34 TAC Chapter 20 (relating to Texas Procurement and Support Services), or any successor rules, regarding soliciting and awarding contracts. The Department shall comply, to the extent applicable, with the requirements of these rules when contracting for professional or personal services that are paid for with State appropriated money or paid by credit unions pursuant to 7 TAC §97.113(l) of this title (relating to Fees and Charges).

(b) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds: "Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards."

(c) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding dispute resolution: "The parties shall attempt to resolve any dispute arising under this contract by using the Department's dispute resolution process." The Department hereby incorporates by reference as its dispute resolution process the rules found in 1 TAC Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes), or any successor rules.

MANDATORY RULE REVIEW

C. (d) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter D (Gifts and Bequests).

BACKGROUND: Section 2001.039, 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. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 97, Subchapter D (Gifts and Bequests) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 25, 2020 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 to the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC Chapter 97, Subchapter D (Gifts and Bequests) continue to exist and that Commission readopt the rules in this chapter.

TITLE 7. BANKING AND SECURITIES
Part 6. Credit Union Department
Chapter 97. Commission Policies and Administrative Rules
Subchapter D. Gifts and Bequests

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter D, concerning Gifts and Bequests consisting of §97.300 concerning Gifts of Money or Property.

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

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter D, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter D, §97.300 in its entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter D. Gifts and Bequests

§97.300. Gifts of Money or Property.

- (a) The department may accept money or property by gift, bequest, devise, or otherwise (“Donation”), only from an organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purposes of funding or performing any authorized activity (“Donor”).
- (b) All Donations must be accepted in an open meeting by a majority of the commission members present and reported in the minutes of the meeting setting forth the name of the Donor and the purpose of the Donation. Before accepting a Donation, the commission may require the Donor to provide information that the commission deems reasonable and necessary to ensure itself that the Donation is not being conveyed to directly or indirectly influence an official act of the department or the commission.
- (c) The department may not solicit money or property from any person or organization to settle an administrative action or to keep the department from taking formal enforcement action.

MANDATORY RULE REVIEW

C. (e) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter E (Advisory Committees).

BACKGROUND: Section 2001.039, 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. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 97, Subchapter E (Advisory Committees) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 25, 2020 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 to the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC Chapter 97, Subchapter E (Advisory Committees) continue to exist and that Commission readopt the rules in this chapter.

TITLE 7. BANKING AND SECURITIES
Part 6. Credit Union Department
Chapter 97. Commission Policies and Administrative Rules
Subchapter E. Advisory Committees

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter E, concerning Advisory Committees consisting of §97.401 concerning General Requirements.

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

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter E, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter E, §97.401 in its entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter E. Advisory Committees

§97.401. General Requirements.

- (a) **Definition.** For purposes of this rule, the term “advisory committee” means a committee, council, board, task force, or other entity with multiple members established to provide advice and counsel to the commission.
- (b) **Creation.** The commission may establish advisory committees to advise the commission on issues within the jurisdiction of the department.
- (c) **Function.** Unless otherwise provided by law, an advisory committee’s responsibility is limited to those matters about which advice or counsel is sought. An advisory committee will have no authority to make rules or establish department policy.
- (d) **Expiration of advisory committee.** Unless expressly provided in this subchapter or other law, an advisory committee will expire on the fourth anniversary of the date of its creation. The date of creation shall be the effective date of the rule establishing the advisory committee.
- (e) **Membership and Quorum.** The chairman may appoint a maximum of 24 individuals to serve on an advisory committee. A majority of those individuals shall constitute a quorum. Unless otherwise provided by specific statute, the appointments shall be balanced to ensure representation of credit unions regulated by the department and consumers of services provided by those credit unions. Each advisory committee shall include at least one department employee as an ex officio member. This employee shall not be considered a committee member for purposes of establishing the maximum number of members or for purposes of determining a quorum.
- (f) **Term of members.** Unless expressly provided in this subchapter or other law, each member of an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman.
- (g) **Presiding officer.** The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.
- (h) **Meetings.** Meetings shall be subject to the requirements of Chapter 551 of the Government Code. Each committee shall meet at least annually, but may meet as often as necessary. The department ex officio member of each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.
- (i) **Reports.** On or before October 1 of each year, each advisory committee shall submit a report to the commission. Upon receipt of the report, the commission shall evaluate the advisory committee's work, usefulness, and costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities. Each report shall include the following:
 - (1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 31);
 - (2) a summary of recommendations from the advisory committee; and
 - (3) other information determined by the advisory committee or the chairman to be appropriate and useful.
- (j) **Expenses.** Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(k) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications, including experience requirements, geographic representation, and training requirements. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

MANDATORY RULE REVIEW

C. (f) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter F (Rulemaking).

BACKGROUND: Section 2001.039, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 97, Subchapter F (Rulemaking) and is recommending that no changes be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 25, 2020 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 to the Commission approve and adopt the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC Chapter 97, Subchapter F (Rulemaking) continue to exist and that Commission readopt the rules in this chapter.

TITLE 7. BANKING AND SECURITIES
Part 6. Credit Union Department
Chapter 97. Commission Policies and Administrative Rules
Subchapter F. Rulemaking

The Credit Union Commission (Commission) has completed its review of Chapter 97, Subchapter F, concerning Rulemaking consisting of §§97.500 and 97.501 concerning Petitions to Initiate Rulemaking Proceedings and Hearing on Proposed Rules, respectively.

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

Notice of the review of 7 TAC, Part 6, Chapter 97, Subchapter F, was published in the December 25, 2020, issue of the *Texas Register* (45 TexReg 9599). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97, Subchapter F, §§97.500 and 97.501 in their entirety in accordance with the requirements of Texas Government Code, §2001.039.

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

Subchapter F. Rulemaking

§97.500. Petitions to Initiate Rulemaking Proceedings.

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

(1) a brief explanation of the proposed rule;

(2) the full text of the proposed rule, and, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and

(3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it.

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

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

§97.501. Hearing on Proposed Rules.

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

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

PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

C. (g) Approve for Publication and Comment Proposed New Rule 7 TAC, Part 6, Chapter 91, Subchapter H, Section 91.809 Concerning Purchase of Assets and Assumption of Liabilities.

BACKGROUND: The proposed new rule will provide the Department approval authority and federal credit union parity to state-chartered institutions exercising authority available to FCUs under NCUA R&R §741.8. This authority allows a credit union, with approval from the Commissioner, to initiate a program of purchasing loans or assuming an assignment of deposits, shares, or liabilities from another credit union, another other financial-type institution or any successor in interest to one of those entities.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission approve the proposed new rule for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission to approve for publication and comment the proposed new rule **7 TAC Section 91.809** concerning purchase of assets and assumption of liabilities.

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

The Credit Union Commission (the Commission) proposes new §91.809 concerning purchase of assets and assumption of liabilities. The proposed new rule will formally recognize authority available to state chartered credit unions because of the availability of those powers to federal credit unions, as granted through parity found under Texas Finance Code, Title 2, §123.003(a).

The proposed new rule will outline the authority of credit unions to initiate programs of purchasing loans or assuming an assignment of deposits, shares, or liabilities from any credit union, another financial-type institution, or any successor in interest to such an entity. The rule further outlines the requirement to seek Commissioner approval on certain transactions of this type and clarifies the approval application process.

In general, new Section §91.809 results from the recognition of the disparity between the authority granted to state-chartered credit unions under current Department rules and the authority granted to federally chartered credit unions, as largely described in the regulations adopted by the National Credit Union Administration (NCUA) in 12 C.F.R. Part 741. The Commission considered the factors outlined in Texas Finance Code §15.402(b-1), including the specific need to preserve and promote competitive parity of credit unions with regard to other depository institutions consistent with safety and soundness implications to credit unions, and the authority granted to federal credit unions under NCUA regulations 12 C.F.R. §741.8, regarding purchase of assets and assumption of liabilities.

Overall, the proposed new rule will serve as a guide to state charters in utilizing this authority and in seeking Commissioner approval for conducting the purchase of assets and assumption of liabilities. The purpose for and description of each new subsection is provided in the following paragraphs.

Subsection (a) provides the general authority to initiate, with Commissioner approval, programs of purchasing loans or assuming assignment of deposits, shares, or liabilities from any credit union, any other financial type institution, or any successor in interests of those entities.

Subsection (b) outlines limited circumstances when Commissioner approval of such activities is not necessary including when such purchases are used to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market; assumptions of liabilities through perfection of a security interest in connection with an extension of credit to a member; purchases or assumptions from any other deposit insured credit union except in circumstances of a merger; or purchases of loan participations authorized under 7 TAC §91.805.

Subsection (c) outlines requirements of the application-for-approval process, including appropriate due diligence by the credit union, proposed policies under which the program would

operate, demonstrated internal expertise to manage such a program, and evidence of requested approval by NCUA under NCUA regulations 12 C.F.R. §741.8.

Subsection (d) references the federal requirements to seek NCUA approval of such a program if the institution seeking authority is federally insured.

Subsection (e) outlines the Department's responsibility to process such an application as soon as possible while recognizing that credit unions requesting such authority should submit an application no later than 60 days prior to the planned implementation of such a program.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. John J. Kolhoff, 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 because the rules concern activities solely of private entities.

PUBLIC BENEFIT/COST NOTE. Mr. Kolhoff 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 initiate such a program. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule as proposed. The application processes the proposed rule calls for is not unlike the processes credit unions already follow to carry out certain other programs. The process does not require the hiring of additional staff, purchase of equipment, or payment of a additional fees. Further, the choice to engage in the types of transactions the proposed rule covers rests solely with each credit union, and it is only those credit unions that choose to engage in this new authorized activity that must complete the application process.

ECONOMIC IMPACT ON CERTAIN BUSINESSES, COMMUNITIES, AND LOCAL ECONOMY AND EMPLOYMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of adopting the proposed rule for the same reasons as mentioned above in the public benefit/cost note. There also will be no impact on local employment or local economy for each year of the first five years the proposed amendments are in effect as the proposed rule relates solely to investment authority of state-chartered credit unions. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code § 2001.0045, concerning increasing costs to regulated persons, because the department is a self-directed semi-independent agency and is exempt from that statute, but also because, as described above in the public benefit and cost note, the proposed rule does not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

GOVERNMENT GROWTH IMPACT STATEMENT. 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.

The first year it is in effect, the rule will create a new regulation that authorizes a credit union to purchase assets and to assume the liabilities of another financial-type institution. This authority will continue into future years unless it is repealed.

TAKINGS IMPACT ASSESSMENT: No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, this proposed rule does not constitute a taking under Texas Government Code § 2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Written comments on the proposed amendments may be submitted in writing to John J. Kolhoff, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@tud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

The amendments are proposed under Texas Finance Code, §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 §123.003, which enlarges the powers of state chartered credit unions to achieve parity of authority with federally chartered credit unions, and §124.351, which sets out permitted investments.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

§91.809. Purchase of Assets and Assumption of Liabilities.

(a) With approval of the Commissioner, a credit union may initiate a program of purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

- (1) Any credit union
- (2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or
- (3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Commissioner approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under NCUA regulations 12 C.F.R. §701.23(b)(1)(iii) or (iv), or purchases of member loans under 7 TAC §91.711;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an insured credit union perfects a security interest in connection with an extension of credit to any member.

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities from any deposit insured credit union, except a purchase or assumption as a part of a merger under 7 TAC §91.1003; or

(4) Purchases of loan participations as defined in and meeting the requirements of §91.805 of this chapter.

(c) A credit union seeking approval under subsection (a) of this section must submit a letter application to the commissioner stating the nature of the transaction and describing the proposed program. The application must include:

- (1) Copies of relevant transaction documents;
- (2) The credit union board's resolution approving the credit union to submit the application and engage in the proposed activity;
- (3) Evidence that the credit union board has reviewed and approved the credit union's due diligence efforts;
- (4) Proposed policies under which the program will operate, and which must comply with the requirements outlined in 7 TAC §§91.802(b), 91.803 and 91.808;
- (5) Demonstrated internal expertise to understand and mitigate the risks associated with the activity proposed;
- (6) Evidence of requested approval by NCUA under NCUA regulations 12 C.F.R. §741.8, if federally insured, or bond covenants from American Share Insurance if necessary;
- (7) Any other information relevant to the transaction and the program; and
- (8) Information requested by the Commissioner or the Department.

(d) A federally insured credit union purchasing assets or assuming liabilities of another entity must also comply with applicable requirements contained within the NCUA regulations 12 C.F.R. Part 741.

(e) The Commissioner approve or deny the application as soon as possible, depending on the complexity of the proposed activities. A credit union should submit a complete application no later than 60 days prior to the planned closing date of any program-related transaction(s).