



CREDIT UNION COMMISSION RULES COMMITTEE MEETING

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

**August 26, 2021
1:00 p.m.**

AGENDA

This meeting of the Texas Credit Union Commission's Rules Committee will be held at the Credit Union Department Building and is open to the public. Due to Governor Greg Abbott's March 13, 2020 proclamation of a state of disaster affecting all counties in Texas related to the Coronavirus (COVID-19) and the Governor's March 16, 2020 suspension of certain provisions of the Texas Open Meetings Act, this meeting of the Rules Committee of the Texas Credit Union Commission will also be held virtually by two-way audio or video conference, as authorized under Texas Government Code Sections 551.125 and 551.127. Those wishing to attend the meeting virtually will find a link to the meeting on the Department's webpage at www.cud.texas.gov on the day of the meeting. Members of the public wishing to provide testimony through virtual means will need to register through email with isabel.velasquez@cud.texas.gov. Members of the public may also participate via phone using 1-936-213-5778 (Toll) Conference ID: 584 733 283#.

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

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

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

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

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C.	Rulemaking Matters	
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Adjournment

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

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

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

A

CALL TO ORDER

CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

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

Legal Counsel

- *Veena Mohan*

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

**CREDIT UNION COMMISSION
RULES COMMITTEE
MEETING MINUTES
MARCH 4, 2021**

A. CALL TO ORDER – Chairman Steve Gilman called the meeting to order at 1:06 p.m. via audio/videoconference pursuant to Chapter 551 of the Government Code. Other members present included Karyn Brownlee, David Shurtz, and Kay Swan. Assistant Attorney General Melissa Juarez was in attendance to serve as legal counsel. Staff members in attendance was John J. Kolhoff, Commissioner. Chairman Gilman appointed Isabel Velasquez as recording secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (February 22, 2021, TRD#2021001165).

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

B. RECEIVE MINUTES OF PREVIOUS MEETING (July 12, 2018)

Mrs. Swan moved to approve the minutes of July 12, 2018 as presented. Mr. Shurtz seconded the motion, and the motion was unanimously adopted.

C. MANDATORY RULE REVIEW

It was the consensus of the Committee, and no objections, that items (a) through (f) be handled as one motion as no changes or comments were received to the proposed existing rules during the comment period:

- (a) 7 TAC, Part 6, Chapter 97, Subchapter A (General Provisions).
- (b) 7 TAC, Part 6, Chapter 97, Subchapter B (Fees).
- (c) 7 TAC, Part 6, Chapter 97, Subchapter C (Department Operations).
- (d) 7 TAC, Part 6, Chapter 97, Subchapter D (Gifts and Bequests).
- (e) 7 TAC, Part 6, Chapter 97, Subchapter E (Advisory Committees).
- (f) 7 TAC, Part 6, Chapter 97, Subchapter F (Rulemaking)

Mr. Shurtz moved to recommend that the Commission find that the reasons for adopting the rules in **7 TAC, Part 6, Chapter 97, Subchapters A, B, C, D, E, and F** continue to exist and that the Commission readopt the rules in these subchapters. Mrs. Brownlee seconded the motion and the motion was unanimously adopted.

(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.** Commissioner Kolhoff briefly explained that 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). He further noted that the rule further outlines the requirement to seek Commissioner approval on certain transactions of this type and clarifies the approval application process.

After a lengthy discussion, Mr. Shurtz made a motion to recommend that the Commission approve for publication and comment the proposed new rule **7 TAC, Section 91.809** concerning purchase of assets and assumption of liabilities, as presented, plus the edits to section (e) of this rule, as discussed in the meeting. Mrs. Swan seconded the motion and the motion was unanimously adopted.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 2:08 p.m.

Steve Gilman
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

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.

MANDATORY RULE REVIEW

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

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

Notice of the review and a request for comments on the rules in this chapter was published in the July 9, 2021 issue of the *Texas Register*. 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 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, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions), Subchapter M (Electronic Operations) and Subchapter N (Emergency or Permanent Closing of Office or Operations) continue to exist and that the Commission readopt these rules.

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

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

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

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

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

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

Subchapter D. Powers of Credit Unions

§91.401. Credit Union Ownership of Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§91.402. Insurance for Members.

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

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

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

(A) the value of the collateral;

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

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

(f) **Best Practices.** The Commission seeks to preserve and promote parity with regard to federal credit unions, foreign credit unions, and other depository institutions, as referenced in Finance Code §§15.402(b-1) and 123.003. The National Credit Union Administration (NCUA)

has provided as guidance for federal credit unions the standards set forth in the rules of the U.S. Office of the Comptroller of the Currency (OCC), related to DCCs and DSAs. The Commission, therefore, adopts by reference the guidance issued by NCUA in May 2003 (Letter No. 03-FCU-06). Credit unions should also look to OCC's rules, codified at 12 C.F.R. Part 37, for guidance as to best practices in the industry regarding the offer and sale of DCCs and DSAs. A copy of the NCUA letter and of the OCC rules may be obtained on the Department website at: www.cud.texas.gov.

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

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

(b) Approval Requirement.

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

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

§91.405. Records Retention and Preservation.

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

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

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

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

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

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

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

(2) journal and cash record;

(3) general ledger and subsidiary ledgers;

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

- (5) comprehensive annual audit reports including evidence of account verification; and
- (6) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

§91.406. Credit Union Service Contracts.

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

§91.407. Electronic Notification.

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

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

§91.408. User Fee for Shared Electronic Terminal.

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

Nathan L. Moenck
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August 6, 2021

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

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

RE: TDR-202102464

Dear Commissioner Kolhoff:

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

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

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

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

08/06/21

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

Sincerely,

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

Nathan L. Moenck
Associate General Counsel

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

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

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

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

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

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

Subchapter M. Electronic Operations

§91.4001. Authority to Conduct Electronic Operations.

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter N. Emergency or Permanent Closing of Office or Operation

§91.5001. Emergency Closing.

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

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

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

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

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

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

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

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

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

(B) labor dispute or strike;

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

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

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

(F) epidemic or other catastrophe; or

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

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

§91.5002. Effect of Closing.

A day on which a credit union or one or more of its operations is closed during its normal business hours as provided by §91.5001 of this title (relating to Emergency Closings) shall be deemed a legal

holiday for all purposes with respect to any credit union business affected by the closed credit union or credit union operation.

§91.5005. Permanent Closing of an Office.

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

COMPLAINT NOTICES AND PROCEDURES

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

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend the Commission approve the proposed 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 91.121** concerning Complaint Notices and Procedures.

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

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

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

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

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

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

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

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

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

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

STATE AND LOCAL GOVERNMENTS

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

STATEMENT OF PUBLIC COST AND BENEFITS

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

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

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

Create or eliminate a government program;

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

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

Create new regulations;

Expand, limit, or repeal an existing regulation;

Increase fees paid to the department;

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

Positively or adversely affect this state's economy.

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

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

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

§91.121. Complaint Notices and Procedures.

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

(b) Required Notice.

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

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

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) total complaints filed, closed and outstanding;

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

FIELD OF MEMEBERSHIP

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

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

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

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

As the Commission reviewed TAC 91.301 it noted that the rule does not consider digital delivery channels as a component of an institution's ability to serve its membership despite the safety and soundness, public policy and consumer convenience implications. It was also noted that the limitation in

recognizing digital financial services imposed by TAC 91.301 is beyond the field of membership requirements outlined by Texas Finance Code Section 122.051, and in direct contravention to the legislative intent outlined by Texas Finance Code Section 15.402 (b-1).

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

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

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

RECOMMENDED ACTION: The Department requests that the Committee recommend the Commission approve the proposed 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 91.301 concerning Field of Membership.

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

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

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

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

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

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

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

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

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

STATE AND LOCAL GOVERNMENTS

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

STATEMENT OF PUBLIC COST AND BENEFITS

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

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

Subchapter C. Members

§91.301. Field of Membership.

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

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

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

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

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

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

(c) Multiple-groups.

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

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

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

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

(d) Overlap protection.

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

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

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

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

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

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

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

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

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

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

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

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

(e) Underserved communities.

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

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

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

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

(f) Parity with Federal Credit Unions.

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

(g) Application.

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

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

HOME EQUITY LENDING

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

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

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

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

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

Title 7. Banking and Securities

Part 8. Joint Financial Regulatory Agencies

Chapter 153. Home Equity Lending

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.1 (relating to Definitions), §153.5 (relating to Two percent fee limitation: Section 50(a)(6)(E)), §153.12 (relating to Closing Date: Section 50(a)(6)(M)(i)), §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.17 (relating to Authorized Lenders: Section 50(a)(6)(P)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)), §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), and §153.51 (Consumer Disclosure: Section 50(g)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

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

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

proposed changes. The agencies received one informal precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §153.1 add definitions and statutory citations for the terms "E-Sign Act" (referring to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006) and "UETA" (referring to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322). The terms "E-Sign Act" and "UETA" provide a concise way to refer to these two statutes, and are used throughout this proposal in connection with electronic disclosures. Proposed amendments throughout §153.1 would also renumber other definitions accordingly.

Proposed amendments to §153.5 would update citations to the definition of "interest" in §153.1, which would be renumbered as described in the previous paragraph.

Proposed amendments to §153.12 relate to oral and electronic loan applications. Section 50(a)(6)(M)(i) provides that a home equity loan closing must occur at least 12 days after the owner "submits a loan application to the lender." Proposed new §153.12(3) would explain that a loan application may be submitted electronically in accordance with state and federal law governing electronic disclosures, with references to the UETA and the E-Sign Act. These amendments respond to an informal precomment recommending amendments to §153.12 on electronic disclosures. A proposed amendment to §153.12(2) would also replace the word "given" with

"submitted," to be consistent with Section 50(a)(6)(M)(i).

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

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

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

In addition, an informal precomment recommended that §153.13 (and other sections in this proposal) consistently refer to both electronic signatures and delivery of electronic documents, when describing requirements under state and federal law. In response to this precomment, the proposed new text throughout this proposal refers to both of these sets of requirements.

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

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

In an informal precomment, a stakeholder recommended deleting the phrase "or the United States" and adding an exception for institutions doing business under the laws of the United States. The stakeholder argued that the proposed text creates an inconsistency because institutions doing business under the laws of the United States are not chartered under the laws of a state. The commissions do not believe that the proposed amendment to §153.17 creates an inconsistency. The proposed amendment uses the word "includes," and does not suggest that the listed state-chartered institutions are the entire population of financial institutions encompassed by Section 50(a)(6)(P). The commissions do not believe that the stakeholder's recommended change would clarify the text, and have not included it in the current proposal. However, for clarity, the proposed amendment to §153.17 includes the phrase "state-chartered" before "financial institution."

A proposed amendment to §153.22 would revise references to the UETA and the E-Sign Act, to refer to these statutes consistently with other sections in this proposal.

A proposed amendment to §153.26 describes requirements for electronically signing the acknowledgment of fair market

value. Section 50(a)(6)(Q)(ix) of the Texas Constitution requires the lender and the owner to sign a written acknowledgment of the fair market value of the homestead property. Proposed new §153.26(4) would explain that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.45 describes requirements for providing an electronic copy of the refinance disclosure. Section 50(f)(2)(D) of the Texas Constitution requires the lender to provide a refinance disclosure to the owner if the owner applies for a refinance of a home equity loan to a non-home-equity loan. Proposed new §153.45(4)(E) would explain that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.51 describes requirements for providing an electronic copy of the consumer disclosure. Section 50(g) of the Texas Constitution requires the lender to provide a consumer disclosure to the owner at least 12 days before closing a home equity loan. Proposed new §153.51(2) would explain that the lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September

2020 stakeholder request on electronic disclosures described earlier in this proposal.

The commissions invite stakeholder comments on whether the proposed amendments appropriately refer to both the UETA and the E-Sign Act. The commissions' general understanding is that both of these statutes contain requirements relating to electronic delivery and signatures, and that prudent lenders will comply with both statutes in providing and executing electronic documents. If any stakeholders have a different understanding of the applicability of these statutes and recommend a different approach to the proposed amendments, then the commissions would be interested in receiving comments on this issue, along with any suggested alternative text.

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

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits

anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

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

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §153.1, §153.12, §153.13, §153.17, §153.26, §153.45, and §153.51 to provide additional guidance to lenders. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To

be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

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

Chapter 153. Home Equity Lending

§153.1. 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) - (6) (No change.)

(7) E-Sign Act--the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(8) [(7)] Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) [(8)] Equity loan agreement--the documents evidencing the agreement between the parties of an equity loan.

(10) [(9)] Fair Market Value--the fair market value of the homestead as determined on the date that the loan is closed.

(11) [(10)] Force-placed insurance--insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) [(11)] Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) [(12)] Lockout provision--a provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) [(13)] Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) [(14)] Preclosing Disclosure--The written itemized disclosure required by Section 50(a)(6)(M)(ii).

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

(17) UETA--the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322

§153.5. Two 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 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) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(12) [~~§153.1(11)~~] of this title (relating to Definitions) are not fees subject to the two percent limitation.

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

(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(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation.

(5) (No change.)

(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(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation.

(7) (No change.)

(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(12) [~~§153.1(11)~~] of this title, are fees subject to the two percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, flood zone determination, tax certificate, 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(12) [~~§153.1(11)~~] of this title are fees subject to the two 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) - (11) (No change.)

(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(12) [~~§153.1(11)~~] of this title are fees subject to the two 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) - (20) (No change.)

§153.12. Closing Date: Section 50(a)(6)(M)(i)

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of

the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) (No change.)

(2) A loan application may be submitted [given] orally [~~or electronically~~].

(3) A loan application may be submitted electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

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

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

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

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

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

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

(6) [(5)] Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

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

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

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

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

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is

located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

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

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

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

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

(3) [(2)] A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section

50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

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

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

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v)

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

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

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA [Texas—Uniform—Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322,] and the

[~~federal~~] E-Sign Act [~~15 U.S.C. §§7001-7006,~~] include requirements for electronic signatures and delivery.

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

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

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

(4) The owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

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

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

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

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

at least 12 days before the date the refinance of the extension of credit is closed.

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

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

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

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

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

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

§153.51. Consumer Disclosure: Section 50(g)

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

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

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

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

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

(6) [~~5~~] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing:

Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

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

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

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