



CREDIT UNION DEPARTMENT

DATE: December 13, 2021
TO: State Chartered Credit Unions
SUBJECT: Change 62 to Update the Texas Rules for Credit Unions

The attached pages constitute changes to the Texas Rules for Credit Unions. Your book of rules should be updated as follows:

<u>REMOVE PAGES</u>	<u>INSERT</u>	<u>AMENDMENTS OR NEW RULES</u>
Index – pages i and ii	Index – pages i and ii	Updated Index
91-7 thru 91-22-b	91-7 thru 91-22	Amended Sections 91.121 and 91.301
93-1 thru 93-16	93-1 thru 93-16	Readopted Chapter 93

FOR YOUR RECORDS - Please keep this letter of transmittal behind the **Update Tab** of the Rules Section of your binder as a record to show your rules are up to date.

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§91.115. Safety at Unmanned Teller Machines.

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

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

(c) **Safety evaluations.**

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

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

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

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

(1) **When notice is required.** The credit union issuer must furnish the notice to its member whenever an access device is issued or renewed. If the credit union furnishes an access device to more than one member on the same account, the credit union is not required to furnish the notice to more than one of the members.

(2) **Content of notice.** The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up or drive-up unmanned teller machines;

(B) protection of the member's code or personal identification numbers;

(C) procedures for reporting a lost or stolen access device;

(D) reaction to suspicious circumstances;

(E) safekeeping and secure disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(F) the inadvisability of surrendering information about the member's access device over the telephone or the Internet, unless to a trusted merchant in a call or transaction initiated by the member;

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

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

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

(e) **Leased premises.**

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

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

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

Source: The provisions on this §91.115 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and amended to be effective November 10, 2013, 38 TexReg 7704; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and amended to be effective November 23, 2017, 42 TexReg 6507; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.120. Posting of Notice Regarding Certain Loan Agreements.

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

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

Source: The provisions on this §91.120 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.121. Complaint Notices and Procedures.

(a) Purpose. This section implements Finance Code §15.408, 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, 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 complainant's name and relationship to the institution;
- (B) the date the complaint is received and resolved or closed by the Department;
- (C) the basis 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 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-jurisdiction, regulatory vs. non-regulatory penalties or fees assessed and the average number of days to resolve.

Source: The provisions on this §91.121 adopted to be effective March 4, 2009, 34 TexReg 1399; amended to be effective March 14, 2010, 35 TexReg 1977; amended to be effective November 13, 2011, 36 TexReg 7540; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and amended to be effective November 23, 2017, 42 TexReg 6508; reviewed and amended to be effective November 5, 2018, 43 TexReg 7342; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739; reviewed and amended to be effective November 28, 2021, 46 TexReg 7873.

§91.125. Accuracy of Advertising.

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

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

- (1) contains materially false claims or misrepresentations of material facts;
- (2) contains materially implied false claims or implied misrepresentations of material fact;
- (3) omits material facts;
- (4) makes a representation likely to create an unjustified expectation about credit union products or services;
- (5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;
- (6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and
- (7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of

the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

Source: The provisions on this §91.125 adopted to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

Subchapter B. Organization Procedures

§91.201. Incorporation Procedures.

(a) An application to incorporate a credit union shall be in writing and supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of incorporation.

(b) **Business Plan.** The application must include a business plan that covers three years and provides detailed explanations of actions that are proposed to accomplish the primary functions of the credit union. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will maintain adequate capital to support its operations. Specifically the plan must:

(1) Describe the credit union's business, including the products, member services, and other activities;

(2) Provide quarterly pro forma financial information for the three years of operation, including annual totals for the Income Statement;

(3) Describe in detail all of the assumptions used to prepare the projected financial information;

(4) Discuss the capital goals and the means to achieve them;

(5) Discuss the overall marketing/advertising strategy to reach potential members;

(6) Discuss the credit union's strategy for obtaining required share and deposit insurance protection for its members' accounts; and

(7) Describe the economic forecast for the three years of the plan.

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

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

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

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

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

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

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

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

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

Source: The provisions of this §91.201 adopted to be effective May 11, 2000, 25 TexReg 3945; adopted to be effective January 7, 2004, 29 TexReg 82; amended to be effective November 14, 2004, 29 TexReg 10253; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.202. Bylaw and Articles of Incorporation Amendments.

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

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

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

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

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

(f) A credit union's board of directors may amend its bylaws to adopt any standard bylaw without approval by the commissioner provided: (1) the wording of the amendment is identical to the Standard Bylaws; and (2) the credit union submits a completed, fully executed Certification of Resolution of Amendment to Credit Union Bylaws ("Certification") to the commissioner. The commissioner will promptly acknowledge receipt of the Certification. The amendment will be effective as of the date the commissioner acknowledges receipt of the Certification.

Source: The provisions of this §91.202 adopted to be effective May 11, 2000, 25 TexReg 3945; amended to be effective March 14, 2004, 29 TexReg 2305, amended to be effective November 16, 2005, 30 TexReg 7433; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42, TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.203. Share and Deposit Insurance Requirements.

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

Source: The provisions of this §91.203 adopted to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.205. Credit Union Name.

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

(f) Before using an assumed name, a credit union shall take reasonable steps to ensure that use of the name will not cause a reasonable person to believe the credit union's different facilities are different credit unions or to believe that shares or deposits in one facility are separately insured from those of another of its facilities.

Source: The provisions of this §91.205 adopted to be effective May 11, 2000, 25 TexReg 3947; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7433; reviewed and amended to be effective November 8, 2009, 34 TexReg 7626; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and amended to be effective November 23, 2017, 42 TexReg 6508; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

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

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

(1) Prior to offering secondary capital accounts, the credit union shall file an application for approval with the commissioner. The application shall be supported by a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts, along with such other information and data as the commissioner may require.

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

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

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

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

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

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

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

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

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

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

Source: The provisions of this §91.206 adopted to be effective March 14, 2004, 29 TexReg 2305; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7625; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.208. Notice of Known or Suspected Criminal Violations.

(a) Each credit union shall exercise reasonable due diligence to discover, investigate, and report theft, embezzlement, and other types of criminal activity affecting the credit union. The credit union shall provide written notice to the Department within 30 calendar days for any of the following known or suspected criminal violations:

- (1) Insider abuse involving any amount,
- (2) Other transactions, including potential money laundering or violations of the Bank Secrecy Act, aggregating \$5,000 or more,
- (3) Losses resulting from robbery or burglary.

(b) When applicable, a credit union may meet the reporting requirements of this section by providing the Department a copy of a Suspicious Activity Report prepared in accordance with the NCUA Rules and Regulations 12 C.F.R. §748.1(c). The timeframe for reporting the activity to the Department in this manner may be extended up to 60 days when authorized by the regulation.

Source: The provisions of this §91.208 adopted to be effective July 12, 2009, 34 TexReg 4512; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.209. Call Reports and Other Information Requests.

- (a) Each credit union shall prepare and submit, in a manner prescribed by the commissioner, a quarterly financial and statistical report. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.
- (b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.
- (c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty of \$50 for each day or fraction of a day such report or document is in arrears.
- (d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.
- (e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.
- (f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to cause the NCUA to reduce or negate its own penalty assessment against the credit union under Section 202 of the Federal Credit Union Act (12 U.S.C. §1782) for late or false/misleading filing of a quarterly call report (Form 5300). The Department shall abate the penalty, in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, assessed by the Department, however, shall not be decreased below the amount authorized to be assessed under subsection (a) of this section.

Source: The provisions of this §91.209 adopted to be effective August 9, 1998, 23 TexReg 7767; amended to be effective April 7, 2002, 27 TexReg 2434; amended to be effective November 16, 2005, 30 TexReg 7434; amended to be effective July 12, 2009, 34 TexReg 4512; reviewed and amended to be effective July 11, 2010, 35 TexReg 1898; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and amended to be effective November 23, 2017, 42 TexReg 6508; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

§91.210. Foreign Credit Unions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and operational matters. The agreement, however, shall not limit the jurisdiction or authority of the commissioner to examine, supervise and regulate a foreign credit union that is operating or seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.

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

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

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

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

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

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

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

Source: The provisions of this §91.210 adopted to be effective February 8, 2001, 26 TexReg 1131; amended to be effective June 8, 2003, 28 TexReg 4410; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392; reviewed and readopted to be effective July 14, 2017, 42 TexReg 3807; reviewed and readopted to be effective June 4, 2021, 46 TexReg 3739.

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. The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the ability 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; and
- (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) 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.

Source: The provisions of this §91.301 adopted to be effective February 11, 2001, 26 TexReg 1132; adopted to be effective January 7, 2004, 29 TexReg 82; readopted to be effective June 22, 2004, 29 TexReg 6423; reviewed and amended to be effective July 13, 2008, 33 TexReg 5294; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and amended to be effective July 31, 2016, 41 TexReg 5413; reviewed and readopted to be effective February 10, 2020, 45 TexReg 1244; reviewed and amended to be effective November 28, 2021, 46 TexReg 7873.

§91.302. Election or Other Membership Vote By Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting.

(a) All credit unions should actively promote member participation in elections and other membership votes as long as the costs are reasonable and the integrity of the vote is not compromised. Any credit union instituting alternative procedures or systems to benefit members who find it difficult or inconvenient to vote at annual or special meetings must ensure that the alternative is thoroughly explained and publicized so that all members will be able to take advantage of those procedures or systems.

(b) The board of directors, before holding an election or other membership vote that uses electronic balloting, early voting, absentee voting, or mail balloting, shall establish written election rules, including procedures to: control, tabulate and retain ballots; identify invalid ballots; and handle disputed election results and tie votes.

(c) Any elections or other membership vote using electronic balloting, early voting, absentee voting, or mail balloting are subject to the following conditions:

(1) The election tellers shall be appointed by the board of directors;

(2) At least 30 days prior to the annual or special meeting, the board of directors will cause either a printed ballot or notice of a ballot, along with appropriate instructions, to be mailed to all members eligible to vote;

(3) Completed electronic or mail ballots cast during early or absentee voting must be received prior to convening the annual or special meeting;

(4) The votes will be tallied by the tellers and the results of the vote will be made public at the annual or special meeting.

(d) In the event of a malfunction of the electronic balloting system, the board of directors may in its discretion order elections or other vote to be held by mail ballot only. The board may make reasonable adjustments to the voting time frames in subsection (c) of this section, or postpone the annual or special meeting if necessary, to complete the elections prior to the annual or special meeting.

Source: The provisions of this §91.302 adopted to be effective November 13, 2000, 25 TexReg 11278; amended to be effective November 14, 2004, 29 TexReg 10253, reviewed and amended to be effective July 13, 2008, 33 TexReg 5295; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and readopted to be effective March 7, 2016, 41 TexReg 2179; reviewed and readopted to be effective February 10, 2020, 45 TexReg 1244.

§91.310. Annual Report to Membership.

(a) Every credit union shall provide to its membership an annual written report, as prescribed below. The report must be updated before the credit union's annual meeting and shall be available on the credit union's website throughout the year. Any credit union that does not maintain a website shall distribute the report at its annual meeting and must notify members at least annually that copies of the report are available upon request.

(b) The annual report shall cover the credit union's operations during the preceding calendar year and shall contain, at a minimum, the following information:

- (1) the names and dates of expiration of the terms of office for each director on the credit union's board;
 - (2) the names of any honorary or advisory directors appointed by the board;
 - (3) a brief description of any changes, since the last report, to the credit union's:
 - A. senior management staff;
 - B. bylaws or articles of incorporation;
 - C. financial condition and operating results;
 - D. membership size and services offered; and
 - (4) the credit union's year end balance sheet and income/expense statement.
- (c) For purposes of this rule, senior management staff shall include the chief executive officer, any assistant chief executive officers, including any vice-presidents and above, and the chief financial officer.

Source: The provisions of this §91.310 adopted to be effective November 8, 2009, 34 TexReg 7625; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and readopted to be effective March 7, 2016, 41 TexReg 2179; reviewed and readopted to be effective February 10, 2020, 45 TexReg 1244.

§91.315. Members' Access to Credit Union Documents.

(a) Required Notice. Every credit union shall provide notice to its membership of the availability of certain documents related to the credit union's finances and management.

(b) Delivery of Required Notice. A credit union shall post a copy of the required notice on its website throughout the year. The notice required by this section shall be published in the credit union's newsletter twice a year. If a credit union does not maintain a website and distribute a newsletter at least semiannually, the credit union shall provide the notice at least semiannually with each member's account statement.

(c) Documents Available to Members. Upon request, a member is entitled to review or receive a copy of the most recent version of the following credit union documents:

1. balance sheet and income statement (the non-confidential pages of the latest call report may be given to meet this requirement);
2. a summary of the most recent annual audit completed in accordance with §91.516 of this chapter (relating to Audits and Verifications);
3. written board policy regarding access to the articles of incorporation, bylaws, rules, guidelines, board policies, and copies thereof; and
4. Internal Revenue Service Form 990.

Source: The provisions of this §91.315 adopted to be effective November 8, 2009, 34 TexReg 7627; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and readopted to be effective March 7, 2016, 41 TexReg 2179; reviewed and readopted to be effective February 10, 2020, 45 TexReg 1244.

CHAPTER 93

Subchapter A. Common Terms

§93.101. Scope; Definitions; Severability.

(a) This chapter provides for an efficient and uniform system of practice and procedure before the Department. This chapter governs the institution, conduct, and determination of adjudicative proceedings, required or permitted by law, whether instituted by the Department or by filing of an application, notice, or any other pleading. This chapter does not enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Department, or the substantive rights or any person or agency. All contested case hearings will be conducted by the State Office of Administrative Hearings and will be governed by Title 1, Chapter 155 of the Texas Administrative Code and this chapter.

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

(1) ADR -- alternative dispute resolution.

(2) ALJ -- administrative law judge employed by the State Office of Administrative Hearings.

(3) APA -- The Administrative Procedure Act (Texas Government Code, Chapter 2001).

(4) Applicant -- Any person seeking a certificate, charter, or approval of an application from the Department.

(5) Contested case or proceeding -- a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commissioner or the Commission after an opportunity for adjudicative hearing. A contested case at the Department commences upon the filing of a proper and timely request for hearing.

(6) Party -- A person admitted to participate in a contested case.

(7) Person -- Any individual, credit union, or other legal entity, including a state agency or government subdivision.

(8) PFD -- a proposal for decision issued by an ALJ.

(9) Respondent -- A credit union or other person against whom a sanction is directed by the Department.

(10) Sanction -- Any administrative penalty, disciplinary action, or enforcement action imposed by the Department.

(11) SOAH -- the State Office of Administrative Hearings.

(12) TAC -- Texas Administrative Code.

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

Source: The provisions of this §93.101 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5810; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4965; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

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Subchapter B. General Rules

§93.201. Appeals to the Commission, Appointment of SOAH.

(a) The Department appoints SOAH to be its finder of fact in contested cases. The Department does not delegate to the ALJ and retains for itself the right to determine the sanctions and make the final decision in any contested case.

(b) Contested cases shall be conducted in accordance with the APA and SOAH's procedural rules (1 TAC Chapter 155) and shall be heard by an ALJ assigned by SOAH. When the Department submits a request to docket a case, SOAH acquires jurisdiction over a contested case and retains jurisdiction until SOAH issues a proposal for decision (PFD) or final amendments or corrections, if any, to the PFD, or upon SOAH's remand of the case to the Department. In case of conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.

Source: The provisions of this §93.201 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective on February 24, 2003, 28 TexReg 1631; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and readopted to be effective February 22, 2010, 35 TexReg 2021; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4966; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.202. Computation of Time.

Unless otherwise required by law, in computing any period of time set forth in this chapter, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a state legal holiday. Time limits shall be computed using calendar days rather than business days.

Source: The provisions of this §93.202 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5811; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.203. Ex Parte Communications.

(a) Upon receipt of a request for hearing and continuing until the time a motion for rehearing is denied, the time for ruling on such a motion has expired, or the proceeding is otherwise final, the commissioner and members of the commission may not communicate directly or indirectly with any party or a representative of a party in a contested case in connection with any issue of fact or law in the contested case except upon notice and opportunity for each party to participate.

(b) The commissioner and members of the commission may communicate ex parte with employees of the department who did not participate in any hearing in the case in order to utilize special skills or knowledge of the department's staff in evaluating the record in the case. Prohibited

ex parte communications shall not include any written communication if the communicator contemporaneously serves copies of the communication on all parties to the contested case.

Source: The provisions of this §93.203 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and readopted to be effective February 22, 2010, 35 TexReg 2021; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.204. Informal Disposition.

At any time during the proceedings, the commissioner may make an informal disposition may be made of any contested case by stipulation of the parties, agreed settlement, consent order, or default. No stipulation or agreed settlement between the parties shall be enforced unless it shall have been reduced to writing and signed by parties and made part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated in an order bearing their written consent.

Source: The provisions of this §93.204 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5811; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective on August 5, 2018, 43 TexReg 4967; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.205. Notice of Hearing.

(a) An action subject to this chapter is initiated by the service of such notices as are required to be served under the substantive law governing the particular proceeding. Unless other law authorizing a different notice period is applicable to the particular proceeding, all hearings in contested cases must be preceded by at least 10 day notice, as required by the APA §2001.051. Credit unions shall keep the Department informed as to their correct current mailing address and may be served with initial process by regular, certified, or registered mail to the address furnished the agency.

(b) If a credit union does not file a written answer or other written responsive pleading to the notice required by subsection (a) of this section on or before the 10th day after the date on which the credit union was served with the notice, or if the credit union fails to attend the hearing, the Commissioner may dispose of the case without hearing and grant the relief set forth in the notice.

(c) The Respondent or Applicant shall enter an appearance, with a copy to the Department, within 10 days of the date on which the notice of hearing was served on the person. For purposes of this section, entering an appearance means the filing of a written answer or other responsive pleading with SOAH.

(d) SOAH rules relating to Default Proceedings (1 TAC §155.501) and Dismissal Proceedings (1 TAC §155.501) apply when a Respondent or Applicant fails to appear on the day and time set for the contested case hearing. In that case, the Department may move either for dismissal of the case from SOAH's docket or for the issuance of a default PFD by the ALJ or remand to the Department for entry of default by the Commission or the Commissioner, as appropriate. If the ALJ issues an order dismissing the case from SOAH docket or issues a default PFD, or a remand for entry of default by the Commission, the factual allegations against the Respondent at SOAH are admitted and the Commissioner or the Commission, as appropriate, shall enter a default order

against the Respondent. Any claims raised or applications for approval submitted by an Applicant will be deemed denied.

Source: The provisions of this §93.205 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5811; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4967; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.207. Service of Documents on Parties.

(a) Unless otherwise specified in this chapter, notice to a party or a party's representative in a contested case shall be by hand-delivery, by facsimile transmission, by email if all parties agree, or by regular, certified or registered mail, to the party's last known address. Service by mail shall be complete when the properly addressed document is deposited in a post office or official depository under the care and custody of the United States Postal Service.

(b) A certificate by a party, who files a pleading stating that it has been served on all other parties, is prima facie evidence of service.

Source: The provisions of this §93.207 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5812; reviewed and readopted to be effective February 24, 2014; 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.208. Delegation of Authority.

Unless otherwise provided by law, the commission or the commissioner may delegate to a representative any ministerial duty imposed on the commission or the commissioner, respectively. The provisions of any rule referring to the commission or the commissioner shall be construed to also apply to the duly authorized representative of the commission or the commissioner.

Source: The provisions of this §93.208 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and readopted to be effective February 22, 2010, 35 TexReg 2021; reviewed and readopted to be effective February 24, 2014; 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4967; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.209. Subpoenas.

(a) Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing shall file a written request with the commissioner setting forth the name and address of the witness, time and place of appearance, and any documents or tangible things sought to be produced. Each request shall contain a statement of the reasons why the subpoena should be issued.

(b) Upon a finding that a party has shown good cause for the issuance of the subpoena, the commissioner shall issue the subpoena as prescribed by Government Code §2001.089. The party requesting the subpoena shall be responsible for the payment of any fees or expenses as set out in Government Code §2001.103.

(c) Within ten days after service of the subpoena or, if the compliance date is less than ten days after service, before the compliance date stated in the subpoena, the person to whom the subpoena is directed shall serve upon the commissioner, the ALJ, and the attorney or party designated in the subpoena, any written objection to the subpoena, appearance or to the inspection or copying of any or all of the designated material. The party serving the subpoena shall have five days to file a written response to the objection. No oral argument shall be heard on the objection unless the commissioner or ALJ directs.

Source: The provisions of this §93.209 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5812; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4966; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.210. Discovery; Protective Orders; Motions To Compel.

Except as modified by SOAH, parties have the discovery rights set out in the Administrative Procedure Act. If a party or witness is asked to produce information that is exempt or privileged under the Texas Rules of Civil Procedure or the Texas Rules of Civil Evidence, the party, in addition to filing a written objection under §93.209(c) of this title (relating to Subpoenas), may make a motion with the ALJ for a protective order. The objecting party must request an *in camera* inspection as set out in 1 TAC §155.251(c)(7). The ALJ shall rule on all objections and motions under this section.

Source: The provisions of this §93.210 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5813; reviewed and readopted to be effective February 24, 2014; 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4966; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.211. Administrative Record.

(a) The cost of a transcript of an administrative proceeding requested by a party is paid by the party requesting the transcript. If the ALJ *sua sponte* orders that an administrative hearing be recorded by a court reporter, the cost of a transcript of the administrative proceeding is split equally between the parties.

(b) In the event a final decision or final order is appealed to district court and the Department is required to transmit to the reviewing court a copy of the administrative record of the administrative proceeding, or any part thereof, the appealing party shall pay all of the costs of the preparation of any original or certified copy of the administrative record of the administrative proceeding, including the preparation of any transcript of the hearing that is required to be sent to the reviewing court. If more than one party appeals the decision, the cost of the preparation of the administrative record shall be divided equally among the appealing parties or as agreed by the parties.

Source: The provisions of this §93.211 adopted to be effective August 10, 1999, 24 TexReg 602; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5813; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4966; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.212. Proposal for Decision.

(a) Following a contested case hearing, the ALJ shall review the evidence and testimony and prepare a PFD which shall include findings of fact and conclusions of law, and, if appropriate, may include recommendations for an appropriate decision or sanction.

(b) The ALJ shall serve copies of the PFD on all parties of record within 30 days after conclusion of the hearing. The parties may submit exceptions to the PFD and replies to the exceptions. Exceptions, replies to exceptions, and related briefs must be submitted to the ALJ and to the commission through the department and, unless otherwise indicated, must be filed within deadlines established by the ALJ. The ALJ may amend the PFD in response to the exceptions, replies, or briefs submitted. If the ALJ makes substantive revisions, the ALJ shall circulate the amended PFD to the parties for additional exceptions and briefs before submitting the PFD to the Department.

(c) The ALJ shall submit the PFD together with all materials listed in the APA §2001.060, to the Department. No additional briefs may be submitted after the case is under submission to the commission for decision unless requested by the commission. The APA §2001.058 provides the standards the commission must follow if its decision differs from the PFD.

(d) The commission shall make a decision regarding the PFD within 30 days of the date of receipt of the PFD.

Source: The provisions of this §93.212 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1631; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5813; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4966; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.213. Appearances and Representation.

A party may be represented by an attorney or by an authorized representative, if that person observes proper decorum and the instructions of the ALJ. The ALJ may require any person appearing in a representative capacity to provide evidence of authority to appear as the party's representative.

Source: The provisions of this §93.213 adopted to be effective February 24, 2003, 28 TexReg 1632; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5813; reviewed and readopted to be effective February 24, 2014, TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887 reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

Subchapter C. Appeals of Preliminary Determinations on Applications

§93.301. Finality of Decision; Request for SOAH Hearing; Waiver of Appeal.

(a) The commissioner shall issue a preliminary decision on all applications. Unless a party files a timely written appeal to the commission, the preliminary decision of the commissioner will become final and non-appealable when the time for appeal set out in Finance Code §122.007 or §122.011 expires. If a party submits a written waiver of its right to appeal, the preliminary commissioner's decision becomes final and non-appealable on receipt of the waiver. If a party files a timely appeal, the commissioner's preliminary decision is automatically withdrawn and the Department will refer the matter to SOAH. The commissioner may, at the commissioner's sole discretion, refer any matter to SOAH for hearing prior to and in lieu of entering a preliminary decision.

(b) Notwithstanding subsection (a) of this section, if an application is approved without modification, and no protest or comment was received during the notice period, the commissioner may determine that the preliminary decision of approval should become final immediately.

Source: The provisions of this §93.301 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1632; readopted to be effective February 21, 2006, 31 TexReg 1479; amended to be effective July 2, 2006, 31 TexReg 5080; reviewed and amended to be effective July 11, 2010, 35 TexReg 5814; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4966; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.302. Referral to ADR.

The commissioner may order the parties to participate in non-binding ADR if the commissioner determines that any two of the following conditions are present:

- (1) the parties have not engaged in meaningful negotiation;
- (2) the controversy is reasonably susceptible to compromise or resolution; or
- (3) ADR may produce cost savings.

Source: The provisions of this §93.302 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and readopted to be effective February 22, 2010, 35 TexReg 2021; reviewed and readopted to be effective February 24, 2014; 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.303. Hearings on Applications.

(a) If ADR is not used or if it fails to resolve the controversy, an applicant or other person aggrieved by the commissioner's preliminary determination may appeal to the commission. In such a case, the commissioner shall refer the matter to SOAH and will furnish to the ALJ all statutes, rules and policies upon which the preliminary decision, if any, was based.

In preparing a PFD, the ALJ shall consider this information along with the testimony and documentary evidence presented at the hearing.

(b) Burden of Proof for Unprotested Applications. The applicant must prove each of the statutory and regulatory requirements for approval by a preponderance of the evidence.

(c) Burden of Proof for Protested Applications. The applicant must prove each of the statutory and regulatory requirements for approval by a preponderance of the evidence. In cases in which field of membership is at issue, the protestant must establish by a preponderance of the evidence that overlapping fields of membership will unreasonably harm the protestant. For the purposes of this section, to constitute “unreasonable harm” an overlap must threaten the protestant’s welfare and stability or its financial viability to such an extent that it would adversely impact its safety and soundness as a credit union.

Source: The provisions of this §93.303 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1633; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5814; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4967; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.305. Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title.

If ADR is not used or fails to resolve the controversy, whether the application is protested or unprotested, the applicant has the burden to prove each of the applicable statutory and regulatory requirements for approval by a preponderance of the evidence.

Source: The provisions of this §93.305 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1633; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5815; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal

§93.401. Appeals Of Cease And Desist Orders And Orders Of Removal.

- (a) Unless the board of directors or person affected by the order files a timely written appeal, the commissioner's cease and desist order or order of removal becomes final and non-appealable when the applicable statutory time for appeal expires.
- (b) If a timely request for appeal is filed, the commissioner shall forward the matter to SOAH to set a hearing.
- (c) The hearing on a cease and desist order or order of removal is closed to the public. The orders, correspondence, and records relating thereto, are confidential and cannot be revealed to the public. Parties with access to confidential information during the contested case must sign a confidentiality agreement as provided in §91.8000(f) of this title (relating to Discovery of Confidential Information).
- (d) At the hearing, the commissioner must establish a prima facie case that the statutory or regulatory violations or the unsafe or unsound practices justify the cease and desist order or order of removal.

Source: The provisions of this §93.401 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1634; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5815; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4967; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.402. Stays.

Where an order by its terms, by statute, or by these rules will become final before a hearing can be held, any aggrieved party who has filed a timely request for hearing under this chapter may file a written request with the commissioner to stay part or all of the order until the matter has been heard and a final decision issued. The commissioner may grant a stay where the respondent has adequately demonstrated a reasonable defense which might result in the respondent prevailing on the merits at the hearing, the respondent will be irreparably injured in the absence of the stay, the stay would not substantially or irreparably harm other interested persons, and the stay would not jeopardize the public interest or contravene public policy.

Source: The provisions of this §93.402 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1634; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5815; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

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Subchapter E. Appeals of Orders of Conservation

§93.501. Appeals of Orders of Conservation.

- (a) Unless the credit union's former board of directors files a timely written appeal, the commissioner's order of conservation becomes final and non-appealable when the statutory time for appeal expires.
- (b) If a timely request for hearing is filed with the appeal, the commissioner shall forward the matter to SOAH to set a hearing.
- (c) The credit union's former board of directors has the burden to prove by a preponderance of the evidence that the board should regain control of the credit union.
- (d) The SOAH hearing on an order of conservation is closed to the public. All orders and correspondence relating thereto are confidential and may not be revealed to the public. Parties with access to confidential information during the contested case must sign a confidentiality agreement as provided in §91.8000(f) of this title (relating to Discovery of Confidential Information).
- (e) Parties must file exceptions, if any, to the PFD within five days after the date of service of the PFD. Replies to exceptions shall be filed within three days of the date of service of the exceptions.
- (f) The Commission shall meet to consider the PFD no later than 45 days after the Department receives the PFD from SOAH.

Source: The provisions of this §93.501 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5816; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4968; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.502. Retention of Attorney.

In the event a credit union retains an attorney or hires other persons to assist the credit union in contesting or satisfying the requirements of an order of conservation, the commissioner shall authorize the payment of reasonable fees and expenses for such persons as expenses of the conservatorship. In order for the commissioner to determine the reasonableness of the fees and expenses, the credit union must submit a billing statement showing the billable rate, the number of hours claimed, and a detailed description of services performed and related expenses incurred. The credit union may also submit copies of other bids received for the services, research substantiating the reasonableness of the fees charged, or any other evidence the credit union believes may support the reasonableness of the fees and expenses. Any fees or expenses the commissioner deems unreasonable shall not be authorized for payment.

Source: The provisions of this §93.502 adopted to be effective March 14, 2004, 29 TexReg 2639; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and readopted to be effective February 22, 2010, 35 TexReg 2021; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

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Subchapter F. Appeal of Commissioner's Final Determination to the Commission

§93.602. Decision by the Commission.

The Commission shall consider the questions raised in the appeal, as well as any additional matters pertinent to the appeal, whether or not included in the motion for appeal. Decisions by the Commission must be based on testimony and other evidence in the hearing record. The Commission may adopt or decline to adopt, with or without changes, all or part of the commissioner's decision or the ALJ's PFD and the underlying findings of fact and conclusions of law. The Commission may remand the proceeding for further consideration by the commissioner with or without reopening the hearing. The Commission may take any additional actions it considers to be just and reasonable, as permitted by law.

Source: The provisions of this §93.602 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1635; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5816; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.603. Oral Arguments Before the Commission.

Any party wishing to present oral arguments to the Commission must make a written request at least fifteen days before the scheduled Commission meeting. The request must state the length of time the party seeks. The Commission, may grant or deny the request. If the request is granted, the Commission will determine the amount of time allotted and the issues on which oral argument is allowed. The Commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that Commission members may have.

Source: The provisions of this §93.603 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1635; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5816; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.604. Motion for Rehearing.

The procedures and deadlines of APA govern the filing of a motion for rehearing with the Commission.

Source: The provisions of this §93.604 adopted to be effective August 10, 1999, 24 TexReg 6027; amended to be effective February 24, 2003, 28 TexReg 1635; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5817; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4969; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.

§93.605. Final Decisions and Appeals.

- (a) The Commission's decision is final and non-appealable:
 - (1) if a motion for rehearing is not filed on time, upon the expiration of the period for filing a motion for rehearing; or
 - (2) if a motion for rehearing is filed on time, on the date the order overruling the motion for rehearing is rendered; or the motion is overruled by operation of law.
- (b) A party to a contested case who has exhausted all administrative remedies and who is aggrieved by a final decision of the Commission in a contested case may seek judicial review of the decision.

Source: The provisions of this §93.605 adopted to be effective August 10, 1999, 24 TexReg 6027; readopted to be effective November 18, 2002, 27 TexReg 11185; readopted to be effective February 21, 2006, 31 TexReg 1479; reviewed and amended to be effective July 11, 2010, 35 TexReg 5817; reviewed and readopted to be effective February 24, 2014, 39 TexReg 1738; reviewed and readopted to be effective March 9, 2018, 43 TexReg 1887; reviewed and amended to be effective August 5, 2018, 43 TexReg 4969; reviewed and readopted to be effective November 8, 2021, 46 TexReg 7899.