



CREDIT UNION COMMISSION MEETING

Credit Union Department Building

914 East Anderson Lane

Austin, Texas

March 11, 2022

9:00 a.m.

AGENDA

This meeting of the Texas Credit Union Commission will be held at the Credit Union Department Building at 914 E. Anderson Ln., Austin, Texas 78752 and is open to the public. Only onsite testimony will be allowed; however, the meeting will be transmitted live through a link on the Department's webpage at www.cud.texas.gov on the day of the meeting, March 11, 2022 at 9:00 a.m.

An electronic copy of the agenda is now available at www.cud.texas.gov under Credit Union Commission, Commission Meetings, along with a copy of the meeting materials. A recording of the meeting will be available after March 17, 2022. To obtain a recording, please contact Isabel Velasquez at 512-837-9236.

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

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

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Adjournment

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

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

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

A

CALL TO ORDER

TEXAS CREDIT UNION COMMISSION MEMBERS

- ***Yusuf E. Farran, Chair***
- ***Elizabeth L. “Liz” Bayless***
- ***Karyn C. Brownlee***
- ***Beckie Stockstill Cobb***
- ***Steven “Steve” Gilman***
- ***Sherri B. Merket***
- ***Jim Minge***
- ***David F. Shurtz***
- ***Kay Rankin-Swan***

Legal Counsel

- ***Nancy Elmilady***

Staff

- ***John J. Kolhoff***
- ***Robert W. Etheridge***
- ***Joel R. Arevalo***
- ***Isabel Velasquez***

B

CREDIT UNION COMMISSION MEETING MINUTES

Draft copies of the minutes for the November 5, 2021 meeting, and the corresponding follow-up action report, are located under **Tab B**.

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

RECOMMENDED MOTION: I move that the minutes of the Commission's regular meeting of November 5, 2021 be approved as presented.

CREDIT UNION COMMISSION MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane, Austin, Texas
November 5, 2021

A. CALL TO ORDER -- Chair Yusuf Farran called the meeting to order at 9:10 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Other members present included, Liz Bayless, Karyn Brownlee, Beckie Stockstill Cobb, Sherri Merket, Jim Minge, David Shurtz and Kay Swan. Assistant Attorney General Melissa Juarez was in attendance via videoconference to serve as legal counsel. Representing the Department staff were John J. Kolhoff, Commissioner, Nancy Elmilady, General Counsel, and Joel Arevalo, Director of Information and Technology. Chair Farran appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (**October 11, 2021 TRD#2021006131**).

❖ RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES --

Chair Farran inquired if there were any requests or motions to excuse an absence. Mrs. Merket moved to excuse commission member Steve Gilman from the Commission meeting on November 5, 2021. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

❖ GENERAL PUBLIC COMMENT -- Chair Farran invited public input on matters that were not scheduled items on the agenda for possible future consideration by the Commission. No public comments were received.

B. MINUTES OF PREVIOUS MEETING (August 27, 2021) -- The Chair referred the members to the draft minutes of the previous meeting included in the agenda packet and asked for any proposed edits. Hearing none, the chair asked for

a motion to approve the minutes. Mrs. Brownlee moved for approval of the minutes of August 27, 2021 as presented. Mrs. Bayless seconded the motion, and the commission carried the motion unanimously.

C. COMMISSIONER EVALUATION COMMITTEE - CONSIDERATION OF THE REPORT AND RECOMMENDATIONS OF THE COMMISSIONER EVALUATION COMMITTEE RELATED TO THE COMMISSIONER'S FY 2021 PERFORMANCE REVIEW AND FY 2022 REMUNERATION. It was the determination of the Chairman to move agenda item (C) to the end of the business agenda.

D. DEPARTMENT'S FY 2021 BUDGET & FINANCIAL PERFORMANCE – Commissioner Kolhoff reported that in 2020 the Commission adopted a strategic plan for Fiscal Years 2021-2025. The \$4.3 million FY 2021 budget approved by the Commission in August 2020 includes the maintenance and operating and capital improvement budget in support of the Strategic Plan. At the end of the twelve months, total expenditures were \$3.537 million or approximately 17% less than budgeted projections of \$4.256 million. Almost all lines performed below budgeted levels apart from maintenance costs for FY 2021. Mr. Kolhoff further reported that additional maintenance costs in FY 2021 included \$20,000 water remediation on the exterior of the west wall of the building and \$13,000 that address repairs on the landscaping to the front of the building. Mr. Kolhoff reported that the unspent funds from the FY 2021 budget predominately represents travel related savings because of the pandemic and personnel savings due to vacancies.

After a brief discussion, the Commission took no action.

E. STATE CREDIT UNION SYSTEM – Commissioner Kolhoff briefly indicated the Texas economy is rebounding well from the impact of the COVID-19 pandemic. The unemployment rate for Texas declined to 5.9% at month-end August

2021, down from 6.2% from the prior month. Overall, Texas credit unions continue to perform well and the industry for Texas charters remains safe and sound. Earnings performance trends remain at their strongest level during the last five years and asset quality ratios are sound. Furthermore, the second quarter 2021, earnings performance data for Texas credit unions reflects that high levels of net income have been generated which are enough to cover operating costs and build net worth. Absent any additional stimulus payments, it is anticipated that deposit and asset growth will be controlled at a modest to moderate level and results in a strengthening of net worth ratios for Texas charters. Moving forward, it remains imperative for the Department to continue to work collaboratively with Texas charters to safeguard the financial interests of millions of Texans and work cooperative with our credit unions as they continue to encounter any challenges associated with the pandemic.

After a brief discussion, the commission took no action.

F. PROPOSED INTERNAL AUDITOR REQUEST (RFP) – Commissioner Kolhoff reported that the Sunset Commission recommended that the Department initiate an internal audit program that exceeds statutory requirements for an Agency of the Department's size and nature. Department management and the Commission agreed to implement a program and formed an Audit Committee, whose first meeting was held in June 2021. The Department published the approved RFP and the deadline to submit bids was October 22. No bids have been received. We are currently figuring out if there is an issue with the RFP, or if there are some other issues we can look at and then republish.

After a short discussion, the commission took no action.

G. Adoption of the Department's Equal Employment and Workforce Diversity Plan. Commissioner Kolhoff explained that Finance Code Section 15.313 requires the Commission to prepare and maintain a written policy statement⁹ at

to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

After a brief discussion, Mrs. Swan moved that the Commission adopt the Department's Equal Employment and Workforce Diversity Plan as recommended by staff. Mrs. Cobb seconded the motion, and the commission carried the motion unanimously.

H. MANDATORY RULE REVIEW

(a) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms), Subchapter B (Appeals from Commissioner Decisions, Generally), Subchapter C (Appeals of Preliminary Determinations on Applications), Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal), Subchapter E (Appeals of Orders of Conservation), and Subchapter F (Review and Decision by the Commission).** Commissioner Kolhoff reported that Section 2001.039, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed **7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms), Subchapter B (Appeals from Commissioner Decisions, Generally), Subchapter C (Appeals of Preliminary Determinations on Applications), Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal), Subchapter E (Appeals of Orders of Conservation), and Subchapter F (Review and Decision by the Commission)** and is recommending that no changes be made. The Department received no comments on the notice of intention to review.

After a short discussion, Mrs. Merket moved that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms), Subchapter B (Appeals from Commissioner Decisions, Generally), Subchapter C (Appeals of Preliminary Determinations on Applications), Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal), Subchapter E (Appeals of Orders of Conservation), and Subchapter F (Review and Decision by the Commission)** continue to exist and readopt these rules. Mr. Minge seconded the motion, and the commission carried the motion unanimously.

(b) Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.121 (Complaint Notices and Procedures). Commissioner Kolhoff noted that the purpose of the proposed amendments is to implement amendments to Finance Code, Section 15.408 that resulted from the passage of SB 707, 78th Regular Legislative Session (2021). Texas Finance Code, Section 15.408 provides that the Commission shall maintain a system to promptly and efficiently act on complaints filed with the Credit Union Department (Department). The Department received no comments regarding the proposed rule amendments.

After a brief discussion, Mrs. Bayless moved that the Commission adopt the proposed amendments to rule **7 TAC Section 91.121** concerning Complaint Notices and Procedures. Mrs. Swan seconded the motion, and the commission carried the motion unanimously.

(c) Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter C, Section 91.301 (Field of Membership). Commissioner Kolhoff reported that the rule amendment is proposed to: (1) ensure consistency with the field of membership language provided by the Texas Finance Code, Section 122.051; (2) recognize the growing consumer expectation of operational efficiencies obtained through safety and soundness implications of digital delivery of financial services; **11**

and (3) ensure competitiveness with the National Credit Union Administration (NCUA) field of membership rules. Furthermore, he explained that the purpose of the proposed amendments to Section 91.301 is to remove the local service area definition, which exceeds the legislative requirements found in Texas Finance Code, Section 122.051, and to allow the Commissioner to consider an institution's ability to provide financial services through digital channels to meet the needs of its membership. The proposed amendments will provide credit unions the full extent of the field of membership provisions found the Texas Finance Code and will help ensure parity with both federal and foreign state credit unions doing business in Texas. Finally, the proposed deletion of Section 91.301(e)(2) removes the related physical office requirements for an approved underserved community field of membership, to ensure the Commissioner can consider an institution's ability to provide digital delivery of financial services.

After a short discussion, Mr. Shurtz moved that the Commission adopt the proposed amendments to rule **7 TAC Section 91.301** concerning Field of Membership. Mrs. Brownlee seconded the motion, and the commission carried the motion unanimously.

(d) Adoption of Proposed Amendments to 7 TAC, Part 8, Chapter 153 (Home Equity Lending). Commissioner Kolhoff reported that the interpretations in 7 Texas Administrative Code, Chapter 153 are administered by the Joint Financial Regulatory Agencies ("Agencies") consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The Agencies distributed an early pre-publication draft of proposed changes to interested stakeholders for review and then held an online webinar regarding the proposed changes. In general, the purposes of the proposed rule changes to 7 Texas Administrative Code, Chapter 153 are to: (1) specify requirements for electronic disclosures and (2) describe Section

50 applicability to out-of-state financial institutions. No comments were received regarding the proposal.

After a brief discussion, Mr. Shurtz moved that the Commission adopt the proposed amendments to **7 TAC, Part 8, Chapter 153** concerning Home Equity Lending. Mrs. Cobb seconded the motion, and the commission carried the motion unanimously.

I. RESULTS OF NASCUS ACCREDITATION ONSITE REVIEW.

Commissioner Kolhoff provided a brief synopsis on how the Department is subject to an annual offsite review and an onsite review every five years to maintain its accredited status by the National Association of State Credit Union Supervisors (NASCUS). This review incorporates an evaluation of our program against 50 factors incorporated into five broad sections including: Agency Administration and Finance, Personnel and Training, Examination, Supervisory Powers and Legislative Powers. Commissioner Kolhoff reported that on September 22, 2021, the Department had its exit meeting with the NASCUS Accreditation Review Team and was verbally notified accreditation would continue. He further noted that the Department received no recommendations, 10 accolades, and only 8 suggestions over the 50 factors used to evaluate the agency. Finally, Commissioner Kolhoff expressed his congratulations to the examiners and staff for a job well done.

After a short discussion, the commission took no action.

C. COMMISSIONER EVALUATION COMMITTEE - CONSIDERATION OF THE REPORT AND RECOMMENDATIONS OF THE COMMISSIONER EVALUATION COMMITTEE RELATED TO THE COMMISSIONER'S FY 2021 PERFORMANCE REVIEW AND FY 2022 REMUNERATION.

Chairman Farran announced the Commission would be entering into executive session as provided under Section 551.074 of **13e**

Government Code for the purpose of discussing certain personnel issues related to the Commissioner's annual performance evaluation and FY 2022 remuneration. The Commission entered executive session at 9:45 a.m. and reconvened in open session at 10:46 a.m.

Chair Farran noted after returning to open session that no action, decision, or vote was made on matters discussed during the executive session.

Karyn Brownlee, Chair of the Commissioner Evaluation Committee thanked Commissioner Kolhoff for his outstanding leadership and performance, noting the Department's NASCUS reaccreditation, and the unusual and demanding year that included Sunset review, the ongoing pandemic, and challenging winter weather in Texas, all in addition to the regular demands of the job.

Committee Chair Brownlee, made a motion to increase the Commissioner's salary by \$7,500 (to a salary of \$200,000 annually) effective January 1, 2022. The motion was seconded by Mrs. Cobb and passed on a vote of 7 to 1 with Mr. Farran opposing the motion.

It was the consensus of the Commissioner Evaluation Committee to meet on Thursday, March 10, 2022 before the day of the Commission meeting to discuss the reformatting of the Commissioner's performance evaluation form for FY 2022.

J. Future Commission Meetings: Agenda Items, Arrangements, and Dates.

Chair Farran reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for March 11, 2022 at 9:00 a.m., in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chair Farran adjourned the meeting at 10:50 a.m.

Yusuf E. Farran
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

DRAFT

FOLLOW-UP ACTION REPORT

CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 02-25-2022)
<u>November 5, 2021</u>		
7 TAC, Part 6, Chapter 93 Subchapter A, (Common Terms) Subchapter B, (Appeals from Commissioner Decisions, Generally) Subchapter C, (Appeals of Preliminary Determinations on Applications) Subchapter D (Appeals and Cease and Desist Orders and Orders of Removal) Subchapter E (Appeals of Orders of Conservation) Subchapter F (Review and Decision by the Commissioner)	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 11/19/2021.
7 TAC Section 91.121 Complaint Notices and Procedures	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 11/19/2021.
7 TAC Section 91.301 Field of Membership	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 11/19/2021.
Chapter 153, Part 8 The Home Equity Lending 153.1, 153.5, 153.12, 153.13, 153.17, 153.22, 153.26, 153.45 and 153.51	Published in <i>Texas Register</i> as adopted rules.	Published in <i>Texas Register</i> on 12/31/2021.

C

DEPARTMENT'S FY 2022 BUDGET FINANCIAL PERFORMANCE

C. Discussion and Consideration of the Department's FY 2022 Budget and Financial Performance.

BACKGROUND: In 2020 the Commission adopted a strategic plan for Fiscal Years 2021-2025. The \$4.8 million FY 2022 Budget approved by the Commission in June 2021 includes the maintenance and operating budget and capital improvement budget in support of the Strategic Plan.

The following report highlights the Department's FY 2022 financial results for the period ending January 31, 2022. At the end of the five months total expenditures were \$1.515 million or approximately 23% less than budgeted projections of \$1.977 million. Almost all lines performed below budgeted levels apart from other expenditures for FY 2022. The expenditures relate primarily to payment of services at the beginning of the year such as insurance costs, state services such as SWCAP, SORM and TFC costs.

Below budget items for FY 2022 budget predominately represent travel related savings as a result of the pandemic's impact and personnel savings due to vacancies.

RECOMMENDED ACTION: No action is anticipated.

Credit Union Department
BY 2022 Budget Analysis
For the Period Ended 01/31/22

	BY 2022 Budget	BY 2022 YTD Budgeted	BY 2022 YTD Actual	Budget Variance	Percent of YTD Budget
REVENUES:					
Operating Income					
Operating Fees	\$4,894,832	\$2,447,416	\$2,708,217	\$260,801	111%
Out-of-State Branch Fees	\$0	\$0	\$9,500	\$9,500	100%
Examination Fees	\$0	\$0	\$0	\$0	
Application Fees	\$0	\$0	\$500	\$500	
Penalties	\$0	\$0	\$16,368	\$16,368	
Other	(\$51,250)	(\$51,250)	(\$51,250)	\$0	
Operating Income Subtotal	\$4,843,582	\$2,396,166	\$2,683,335	\$287,169	112%
Interest Income (Operating Acct)	\$0	\$0	\$171	\$171	
Interest Income (Contingency Acct)	\$0	\$0	\$67	\$67	
TOTAL REVENUES - FUNDS AVAILABLE TO COVER EXPENDITURES	\$4,843,582	\$2,396,166	\$2,683,573	\$287,407	112%
EXPENDITURES:					
Personnel Expenses:					
Salaries and Wages	\$2,750,629	\$1,128,845	\$1,019,920	\$108,925	90%
Employee Benefits	\$899,512	\$374,797	\$331,471	\$43,326	88%
Total Personnel Expenses	\$3,650,141	\$1,503,642	\$1,351,391	\$152,251	90%
Travel Expenses:					
In State					
Examinations			\$35,114		
Training/Conferences			\$2,058		
Meetings			\$1,016		
Public Forums			\$0		
Other			\$199		
Total In-State	\$375,073	\$156,280	\$38,387	\$117,893	25%
Out-of-State	\$30,000	\$12,500	\$3,509	\$8,991	28%
Commission	\$26,500	\$11,042	\$3,065	\$7,977	28%
Total Travel Expenses	\$431,573	\$179,822	\$44,961	\$134,861	25%
Other Operating Expenses:					
Communication/Utilities	\$51,001	\$21,250	\$22,135	(\$884)	104%
Professional Services/Fees	\$221,790	\$92,413	\$35,423	\$56,990	38%
Supplies/Materials	\$59,470	\$24,779	\$15,284	\$9,495	62%
Printing and Reproduction	\$2,755	\$1,148	\$105	\$1,043	9%
Repairs/Maintenance	\$290,665	\$121,110	\$4,218	\$116,892	3%
Rentals and Leases	\$5,500	\$2,292	\$905	\$1,386	40%
Other Operating	\$130,688	\$30,912	\$41,024	(\$10,113)	133%
Total Other Operating Expenses	\$761,869	\$293,904	\$119,094	\$174,810	41%
TOTAL EXPENDITURES	\$4,843,583	\$1,977,368	\$1,515,446	\$461,921	77%
REMAINING FUNDS TO COVER EXPENDITURES (Actuals)			\$1,168,126		

D

**DEPARTMENT'S GENERAL BUDGET ASSUMPTIONS
AND PARAMETERS**

D. Approve the General Budget Assumptions and Parameters to be used in Guiding the Development of the Department's FY 2023 Budget.

BACKGROUND: Finance Code Section 16.003 gives the Commission the exclusive responsibility for approving the Department's budget each year. Since the budget must be adopted at the July meeting, staff is seeking approval of guidelines for developing the FY 2023 budget to present at the July meeting.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the necessary budget policies and guidelines for the FY 2023 budget.

RECOMMENDED MOTION: I move that the Commission adopt the proposed budget assumptions and parameters for FY2023 as recommended by staff.

BUDGET ASSUMPTIONS FOR BUDGET YEAR 2023

The following broad assumptions will establish the foundation for the development of the Department's Budget Year (BY) 2023 budget and provide a framework to staff and the Commission for setting priorities, determining service levels, and allocating limited financial resources.

1. **Balance Budget** – In accordance with Commission policy, the budget will be balanced using BY 2022 ending reserve balance funds in excess of the aggregate contingency reserves limit.
2. **Contractual Obligations** – The Department intends to meet all contractual obligations. Purchase orders or contracts which were placed and committed prior to the end of Fiscal Year (FY) 2022 for which the requested services performed until after the start of FY 2023 are considered obligated funds. The budget authority for these obligated funds will automatically be carried over to BY 2023 and the BY 2023 budget will be increased by an amount exactly equal to the obligated amount.
3. **Compliance** – The budget shall provide enough funding to continue compliance with all applicable statutes, governmental requirements, administrative rules, and Department policy in regulating and supervising the safety and soundness of credit unions.
4. **Strategic Plan Initiatives** – Consistent with the FY 2023-2027 strategic plan, the budget will provide appropriate funding to implement the delineated initiatives for FY 2023.
5. **Salary and Benefits** – The expenditures for FY 2023 will be based on authorized and existing positions as of August 31, 2022 and include any scheduled salary increases/promotions based on the performance and progression of staff. Filled positions will be budgeted at the actual salary for the individual in that position and vacant examiner positions will be budgeted at the base salary level for a Financial Examiner (FE)III position. Vacant office positions and above FEIII level examiner positions will be budgeted at the mid-point of the salary range for the positions. Employee Benefits will be automatically calculated on all salaries with the appropriate benefit rates established for state agencies. The Department will also monitor legislative initiatives which could result in required legislative pay increases for State of Texas employees.
6. **Merit Increases** – To foster, support, and reward outstanding performance and to retain key high performing staff, aggregate merit increase awards for staff are estimated at an amount equivalent to 3.00% of the total salaries for those positions and will be awarded based on the established merit pay tiers. The corresponding increase in Employee Benefits,

resulting from the proposed merit awards, will also be properly reflected in the budget.

7. **Retiree Insurance Cost** – Retiree Insurance Cost are a result of staff retiring from the Department. Changes in retiree insurance cost are anticipated to be allowable budget adjustments.
8. **Inflation Factor** – No inflationary increases are anticipated, except for increases in the cost of utilities and in state staff travel. Increases in utility costs will be based on the prior year ending Consumer Price Index for the U.S. published by the U.S. Bureau of Labor Statistics. In-state travel costs will be adjusted downward from the prior budget based on the ability of examination staff to complete an increased portion of work remotely.
9. **Statewide Indirect Cost** – Statewide indirect cost allocations are a result of a statewide plan established by the Comptroller of Public Accounts. Changes in indirect cost allocations are anticipated to be allowable budget adjustments.
10. **Out-of-State Travel** – Out of state travel related to examinations, conferences, training, or other authorized purposes will not exceed \$10,000. Travel for NASCUS and FBIIC related meetings for the Commissioner will not exceed \$20,000.
11. **Commission Travel** – At the November 2019 commission meeting, it was decided that the number of commission meetings would be increased from three to four per year. The budgeted annual travel costs for these meetings of \$14,500 per year for BY 2022 budget, will remain the same for BY2023.
12. **Internal Audit Services** – As outlined in the Sunset Advisory Commission's (SAC) report on the Department and the SAC's recommendation, the budget will provide funding for annual audits (i.e. third-party internal audits) of the Department, including other related costs, such as travel, etc.
13. **Electronic Document Management System (EDMS)** – The budget shall provide for the costs associated with the further development and maintenance of our EDMS.
14. **Information Technology** – The budget shall provide enough funding for computer network upgrades and computer equipment replacement in accordance with the Department's Technology Plan.
15. **Improvements** – The budget shall provide enough funding for scheduled maintenance and repairs in accordance with the Replacement/Capital Improvement Plan.
16. **NASCUS Dues** – The budget shall provide enough funding to accommodate the projected increase in the professional association's dues.
17. **Accreditation Fees** – The budget shall provide enough funding to accommodate the fees associated with the Department's continued NASCUS accreditation.

18. **Overnight Travel Stipend** – The budget shall provide enough funding to pay examiners an overnight travel stipend in accordance with the qualifying conditions included in the Department’s policy. The stipend will not be considered a one-time merit award and may be paid to the eligible examiners regardless of their last merit pay or promotion action.
19. **Examiners’ Laptops and Support** –The budget will be adequate to provide laddered funding for the replacement of Department laptops (office and field staff) every three years. Under this assumption, up to 11 laptops will be replaced each fiscal year. The budget will also include any additional costs associated with procuring all software licensing, security and support for the new machines. The Department will exercise diligence and discretion with this assumption and whenever possible, the life of certain laptops may be extended (i.e. from 3 to 4 years, etc.).
20. **Legal Research Tools** – The budget will provide funding to provide the Department’s General Counsel with the funds to obtain the necessary research tools (i.e. Westlaw subscription, etc.) to perform the duties of the position.

E

STRATEGIC PLAN

E. Approve and Authorize the Submission of the Department's Strategic Plan for Fiscal Years 2023-2027.

BACKGROUND: Section 2056.002 of the Government Code requires state agencies to make a strategic plan for its operations. Each even-numbered year, the Department must issue a plan covering five fiscal years beginning with the next odd-numbered fiscal year.

The proposed FY 2023-2027 Strategic Plan summarizes our analysis of the internal and external environment impacting credit unions and the Department and provides goals and objectives for the next five years. The Strategic Plan is centered on the agency's mission to "supervise, regulate and examine Texas credit unions to safeguard the public interest, protect the financial interests of credit union members and promote public confidence in the credit union industry."

The Strategic Plan highlights the agency's four strategic goal and supporting strategic objectives which reflect the outcome or greater impact of the broader strategic goals.

The four strategic goals for 2023-2027 are to:

1. Ensure a safe and sound state credit union system in Texas;
2. Provide a flexible regulatory framework that enables credit unions to provide a full competitive array of financial services;
3. Safeguard the interest of credit union members; and
4. Develop a professional and motivated staff that provides quality service to the citizens of Texas and supports achievement of the Department's statutory mission.

Further, executive management considered the results of the 2021 Employee Engagement Survey, particularly results regarding job satisfaction and pay.

The FY 2023 Annual Operating Plan & Budget will provide specific resources to implement the strategic objectives and initiatives outlined in the proposed Strategic Plan. (The Annual Operating Plan & Budget will be considered at the Commission's June meeting.)

CONCEPTUAL FRAMEWORK: The Legislative Budget Board (LBB) and the Governor's Office determine the elements required to be included in each agency's strategic plan. As presented, the Strategic Plan is the final

draft, unless the LBB and the Office of the Governor amend previously issued instructions.

RECOMMENDED ACTION: The Department requests that the Commission approve the draft of the FY 2023-2027 Strategic Plan and authorize its submission in the form and at the time prescribed.

RECOMMENDED MOTION: I move that the Commission approve the draft of the Strategic Plan for the Department for the fiscal years 2023-2027 and authorize its submission in the format dictated by the Governor and the LBB.

AGENCY STRATEGIC PLAN

FISCAL YEARS 2023 TO 2027

BY THE

CREDIT UNION DEPARTMENT STATE OF TEXAS

CREDIT UNION COMMISSION OF TEXAS

<u>Commission Member</u>	<u>Dates of Term</u>	<u>Hometown</u>
Yusuf E. Farran*	July 16, 2015 to February 15, 2021	El Paso, Texas
Elizabeth L. "Liz" Bayless	August 8, 2019 to February 15, 2025	Austin, Texas
Karyn C. Brownlee	August 8, 2019 to February 15, 2023	Coppell, Texas
Beckie Stockstill Cobb*	July 16, 2015 to February 15, 2021	Deer Park, Texas
Steven "Steve" Gilman*	July 16, 2015 to February 15, 2021	Katy, Texas
Sherri Brannon Merket	April 13, 2011 to February 15, 2023	Midland, Texas
James L. "Jim" Minge	May 21, 2017 to February 15, 2023	Arlington, Texas
David F. Shurtz	August 8, 2019 to February 15, 2025	Hudson Oaks, Texas
Kay Swan	August 8, 2019 to February 15, 2025	Monahans, Texas

**Term expired and no reappointment action by the Governor's Office as of December 31, 2021.*

DATE OF SUBMISSION: JUNE 1, 2022

SIGNED: _____
John J. Kolhoff, Commissioner

APPROVED: _____
Yusuf E. Farran, Commission Chair

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PART 1. STRATEGIC PLAN

AGENCY MISSION

The mission of the Credit Union Department is to safeguard the public interest, protect the financial interests of credit union members, and promote public confidence in the credit union industry in accordance with TEX. FIN. CODE §15.102.

AGENCY PHILOSOPHY

The Credit Union Department will serve the public, credit unions and their members, exercising the highest standards of regulatory oversight, emphasizing professionalism and personal ethics. The Department will guide credit unions toward continuous improvement in financial strength and effectiveness in the provision of financial services to their members. Supervision and examination will be fairly and consistently administered as appropriate to ensure fiscal integrity of the industry. Preservation of public confidence in credit unions and the protection of members' interests will remain a principal focal point of the agency. This will be accomplished through effective regulation and open communication with credit unions and the general public.

AGENCY OVERVIEW

The Credit Union Department ("Department"), under the oversight of the Credit Union Commission ("Commission"), is charged with assuring the safety and soundness of state-chartered credit unions in Texas. The agency also oversees branches of out-of-state credit unions operating in the state.

PART 1. STRATEGIC PLAN

AGENCY GOALS AND ACTION PLAN

AGENCY OPERATIONAL GOAL AND ACTION PLAN	
<i>Goal 1. To ensure a safe and sound credit union industry.</i>	
SPECIFIC ACTION ITEMS TO ACHIEVE YOUR GOAL	
<ol style="list-style-type: none">1. Ensure the Department anticipates, understands, addresses, and communicates risk to credit unions.2. Ensure the Department cooperates with other regulatory authorities on common interests.3. Develop and deploy supervisory methods and analytical tools appropriately pacing industry and economic changes in the financial services industry.	
DESCRIBE HOW YOUR GOAL OR ACTION ITEMS SUPPORTS EACH STATEWIDE OBJECTIVE	
<ol style="list-style-type: none">1. Accountable to tax and fee payers of Texas.<ul style="list-style-type: none">• Ensuring no state funds are spent on Department operations; as a self-directed, semi-independent agency, the Department's revenue is derived from state-chartered credit unions operating fees and assessments.• Being a prudent steward of its financial resources.• Providing transparency through its reporting.• Establishing the appropriate regulatory framework.• Complying with the examination requirements of 7 TEXAS ADMIN. CODE (TAC) Section 97.105.2. Efficient such that maximum results are produced with a minimum waste of taxpayer funds, including through the elimination of redundant and non-core functions.<ul style="list-style-type: none">• Ensuring risk-based supervision is properly implemented and focused on material risks to the industry and individual credit unions.• Identifying emerging risk areas related to industry and individual credit unions.• Working effectively with the NCUA, private share insurance providers, and other state regulators to identify and address risks and emerging issues.• Resolving problem credit unions in a timely fashion, effectively, and when possible, without loss to the share insurance provider.3. Effective in successfully fulfilling core functions, measuring success in achieving performance measures and implementing plans to continuously improve.<ul style="list-style-type: none">• Resolving problem credit unions in a timely fashion, effectively, and when possible, without loss to the share insurance provider.• Ensuring risk-based supervision is properly implemented and focused on material risks to the industry and individual credit unions.• Identifying emerging risk areas related to industry and individual credit unions.• Taking prompt and effective enforcement actions when warranted.4. Providing excellent customer service.<ul style="list-style-type: none">• Implementing and developing new coordination and collaboration agreements with the NCUA, private share insurance providers, and other applicable state regulators regarding supervisory activities performed in credit unions and information exchange.• Working effectively with the NCUA, private share insurance providers, and other state regulators to identify and address risks and emerging issues.5. Transparent such that agency actions can be understood by any Texan.<ul style="list-style-type: none">• Complying with the examination requirements of 7 TAC Section 97.105.	

PART 1. STRATEGIC PLAN

- Implementing and developing new coordination and collaboration agreements with the NCUA, private share insurance providers, and other applicable state regulators regarding supervisory activities performed in credit unions and information exchange.
- Adhering to performance measures.

DESCRIBE ANY OTHER CONSIDERATIONS RELEVANT TO YOUR GOAL OR ACTION ITEM

1. The Department fosters safe and sound credit union practices through regular risk-focused examinations, publication of guidance and policies, ongoing communications with credit union officials, and the review of applications submitted by credit unions to expand activities. When appropriate, the Department has a range of informal and formal enforcement options available to resolve safety and soundness problems identified at these institutions. The Department also devotes resources to administering off-site monitoring programs and to enhance its ability to timely identify emerging safety and soundness issues and trends.
2. Should a situation arise where a noncompliant business is discovered, the Department has statutory authority to take enforcement action against the entity. Disputes are investigated by staff and every attempt is made to bring about a fair resolution. State leadership and other interested parties are routinely provided information about credit unions, and the associated laws, rules, policies, and practices of the Department.
3. This strategic plan reaffirms the Department's mission to ensure that credit unions operate in a safe and sound manner, provide fair access to credit union services, treat members fairly, and comply with applicable laws and rules. The plan presents a vision in which the Department is a preeminent agency that adds value through proactive and risk-based supervision, is sought after as a source of knowledge and expertise and promotes a vibrant and diverse credit union system that benefits the Texas economy. To succeed in that mission and achieve that vision, the Department commits itself to the core values of integrity, expertise, collaboration, and independence—values that always have been the bedrock of the Department's culture.
4. The Department works closely with federal and other state regulators to provide credit unions seamless supervision, minimal disruption and costs, and effective use of resources. The Department continues its collaboration with the National Credit Union Administration (NCUA) started in 2003. The program results in more efficient and less burdensome examinations for credit unions.

AGENCY OPERATIONAL GOAL AND ACTION PLAN

Goal 2. To provide a flexible regulatory framework that enables credit unions to provide a full array of competitive financial services.

SPECIFIC ACTION ITEMS TO ACHIEVE YOUR GOAL

1. Ensure each Commission rule is current, clearly written, and necessary for an effective supervisory process.
2. Support credit union efforts to remain competitive and viable, consistent with safety and soundness implications.

DESCRIBE HOW YOUR GOAL OR ACTION ITEMS SUPPORTS EACH STATEWIDE OBJECTIVE

1. Accountable to tax and fee payers of Texas.
 - Ensuring no state funds are spent on Department operations; as a self-directed, semi-independent agency, the Department's revenue is derived from state-chartered credit unions operating fees and assessments.

PART 1. STRATEGIC PLAN

- Being a prudent steward of its financial resources.
 - Providing transparency through its reporting.
 - Drafting, amending, and implementing rules to fulfill Legislative directives and to ensure relevance to current marketplace conditions.
 - Implementing rulemaking through successful collaboration and consultation with interested parties.
 - Communicating attributes of the state charter within and outside the Department.
 - Implementing and maintaining processes for prompt screening of applications.
2. Efficient such that maximum results are produced with a minimum waste of taxpayer funds, including through the elimination of redundant and non-core functions.
- Drafting, amending, and implementing rules to fulfill Legislative directives and to ensure relevance to current conditions.
 - Developing and modernizing attributes of the credit union charter and the role and status of the industry.
 - Enhancing communication with the NCUA and other state regulators to facilitate better coordination on issues affecting credit unions.
 - Implementing and maintaining processes for prompt screening of applications.
 - Enhancing existing technology solutions that support effective application operations.
3. Effective in successfully fulfilling core functions, measuring success in achieving performance measures and implementing plans to continuously improve.
- Meet or exceed performance measures.
 - Conducting the mandatory rule review in accordance with Commission's approved plan.
 - Implementing and maintaining processes for prompt screening of applications.
 - Establishing policies and procedures that provide clear and comprehensive guidance.
 - Enhancing existing technology solutions that support effective application operations.
4. Providing excellent customer service.
- Accessible staff who are a resource for consumers and the regulated industry.
 - Supporting the continued recognition of the attributes of the state credit union charter through appropriate opinions and rules.
 - Investigate and resolve customer complaints in a timely manner.
 - Establishing policies and procedures that provide clear and comprehensive guidance.
 - Enhancing existing technology solutions that support effective application operations.
 - Providing useful information for consumers and the regulated industry on the Department's website.
5. Transparent such that agency actions can be understood by any Texan.
- Adhering to performance measures.
 - Implementing rulemaking through successful collaboration and consultation with interested parties.
 - Communicating attributes of the state charter within and outside the Department.
 - Establishing policies and procedures that provide clear and comprehensive guidance.

DESCRIBE ANY OTHER CONSIDERATIONS RELEVANT TO YOUR GOAL OR ACTION ITEM

1. The Department places a high priority on its responsiveness to inquiries, requests, and complaints from citizens, members, credit unions, public officials, and other state and federal governmental entities. Pursuant to statute, the Department accepts complaints against credit unions and reviews them for potential violations of applicable laws or rules. When the Department receives complaints, credit unions are contacted and given an opportunity to respond to a member's concern or inquiry.

PART 1. STRATEGIC PLAN

Member complaints have increased over the last five years and the Department expects this trend to continue. In fiscal year 2015, the Department resolved 253 complaints, rising to 265 in 2016, 280 in 2017, 338 in 2018, 376 in 2019, and declining to 344 in 2020 and 323 in 2021. Through its response to these complaints and inquiries, the Department attempts to help members better understand their rights and responsibilities under applicable laws and regulations. The Department monitors the level of satisfaction with its responses to member complaints and inquiries.

2. The Department works closely with federal and other state regulators to provide credit unions seamless supervision, minimal disruption and costs, and effective use of resources. The Department continues its collaboration with the National Credit Union Administration started in 2003. The joint program results in more efficient and less burdensome examinations for credit unions.
3. The Department cooperates with the Financial Crimes Enforcement Network (“FinCEN”) and numerous other federal agencies to monitor compliance with the BSA/AML and USA Patriot Act and other laws governing credit unions. The rise in popularity of virtual or digital currencies has the attention of federal and state regulators for many reasons including money-laundering concerns. FinCEN has issued guidance which labels certain digital currency entities as money transmitters and requires them to implement AML programs.

AGENCY OPERATIONAL GOAL AND ACTION PLAN

Goal 3. To safeguard the interest of credit union members.

SPECIFIC ACTION ITEMS TO ACHIEVE YOUR GOAL

1. Ensure consumer complaints are processed in a timely fashion and investigated appropriately.
2. Encourage credit union involvement in providing financial services in underserved communities.

DESCRIBE HOW YOUR GOAL OR ACTION ITEMS SUPPORTS EACH STATEWIDE OBJECTIVE

1. Accountable to tax and fee payers of Texas.
 - Ensuring no state funds are spent on Department operations; as a self-directed, semi-independent agency, the Department’s revenue is derived from state-chartered credit unions operating fees and assessments.
 - Being a prudent steward of its financial resources.
 - Providing transparency through its reporting.
 - Drafting, amending, and implementing rules to fulfill Legislative directives and to ensure relevance to current conditions.
 - Reinforcing the importance of fair and honest treatment of credit union members through appropriate supervisory and enforcement action.
 - Supporting the efforts of credit unions to expand their fields of membership to include underserved and low-income communities.
2. Efficient such that maximum results are produced with a minimum waste of taxpayer funds, including through the elimination of redundant and non-core functions.
 - Supporting the efforts of credit unions to expand their fields of membership to include underserved and low-income communities.
3. Effective in successfully fulfilling core functions, measuring success in achieving performance measures and implementing plans to continuously improve.
 - Strengthening role in addressing member privacy, information security, and identity theft.

PART 1. STRATEGIC PLAN

- Supporting the efforts of credit unions to expand their fields of membership to include underserved and low-income communities.
- 4. Providing excellent customer service.
 - Strengthening role in addressing member privacy, information security, and identity theft.
 - Supporting the efforts of credit unions to expand their fields of membership to include underserved and low-income communities.
- 5. Transparent such that agency actions can be understood by any Texan.
 - Reinforcing the importance of fair and honest treatment of credit union members through appropriate supervisory and enforcement action.

DESCRIBE ANY OTHER CONSIDERATIONS RELEVANT TO YOUR GOAL OR ACTION ITEM

1. Through its response to the complaints and inquiries, the Department attempts to help members better understand their rights and responsibilities under applicable laws and regulations. The Department monitors the level of satisfaction with its responses to member complaints and inquiries.
2. The National Association of State Credit Union Supervisors (“NASCUS”) has established accreditation standards for credit union supervision and regulation. Patterned after university accreditation, the accreditation process requires a comprehensive review of all factors needed to have a fully functional regulatory agency. The Department has been continuously accredited by NASCUS since 1996. Every year, the accreditation committee of NASCUS requires updated information to maintain accredited status; a full-scale re-accreditation occurs on-site every five years, which for the Department occurred in 2021. Accreditation provides the Department with national recognition among its peers and professional respect from the institutions it regulates.

AGENCY OPERATIONAL GOAL AND ACTION PLAN

Goal 4. To develop a professional and motivated staff that provides quality service to the citizens of Texas and supports achievement of the Department's statutory mission.

SPECIFIC ACTION ITEMS TO ACHIEVE YOUR GOAL

1. Ensure the Department maintains a competent, highly motivated, and diverse workforce in a fair and inclusive work environment.
2. Ensure the Department is an efficient, effective, and ethical organization.
3. Ensure the Department's resource decisions and operations reflect sound financial, security, and risk management principles.

DESCRIBE HOW YOUR GOAL OR ACTION ITEMS SUPPORTS EACH STATEWIDE OBJECTIVE

1. Accountable to tax and fee payers of Texas.
 - Ensuring no state funds are spent on Department operations; as a self-directed, semi-independent agency, the Department's revenue is derived from state-chartered credit unions operating fees and assessments.
 - Being a prudent steward of its financial resources.
 - Providing transparency through its reporting.
 - Drafting, amending, and implementing rules to fulfill Legislative directives and to ensure relevance to current marketplace conditions.
 - Maintaining a comprehensive Equal Employment and Workforce Diversity Plan.
 - Ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework.
 - Ensuring compliance with the rules, policies and procedures for ethical conduct by its employees.

PART 1. STRATEGIC PLAN

- Achieving reliable, accurate and timely financial resources management information.
- 2. Efficient such that maximum results are produced with a minimum waste of taxpayer funds, including through the elimination of redundant and non-core functions.
 - Executing an aggressive recruiting and comprehensive training strategy for new entry-level examiners.
 - Developing proactive initiatives focused on the retention of employees, including addressing pay differentials for examiners to bring base pay more in line with the examiner pay at other regulatory agencies, maintaining staffing to achieve the ideal level of 160 exam days annually for each examiner, mentoring, employee feedback, incentives, and recognition programs.
 - Creating a leadership development program to support and enhance management succession.
 - Ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework.
 - Ensuring reliable, secure, modern information technology systems are in place in support of an environment that meets the Department's mission, goals, and objectives.
 - Ensure that ongoing training for examiners keeps pace with industry needs in areas such as information technology, member business loans, asset-liability management, compliance, etc.
 - Achieving reliable, accurate and timely financial resources management information.
 - Implementing security controls to mitigate risk and to protect confidential information.
 - Improving contingency planning for business continuity, including information technology recovery, compliance with Homeland Security requirements, and crisis management strategies.
- 3. Effective in successfully fulfilling core functions, measuring success in achieving performance measures and implementing plans to continuously improve.
 - Executing an aggressive recruiting and comprehensive training strategy for new entry-level examiners.
 - Developing proactive initiatives focused on the retention of employees, including addressing pay differentials for examiners to bring base pay more in line with the examiner pay at other regulatory agencies, maintaining staffing to achieve the ideal level of 160 exam days annually for each examiner, mentoring, employee feedback, incentives, and recognition programs.
 - Creating a leadership development program to support and enhance management succession.
 - Maintaining a comprehensive Equal Employment and Workforce Diversity Plan.
 - Ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework.
 - Ensuring compliance with the rules, policies and procedures for ethical conduct by its employees.
 - Ensuring reliable, secure, modern information technology systems are in place in support of an environment that meets the Department's mission, goals, and objectives.
 - Ensure that ongoing training for examiners keeps pace with industry needs in areas such as information technology, member business loans, asset-liability management, compliance, etc.
 - Leveraging technology, with a focus on information management initiatives, such as records and knowledge management.
 - Implementing security controls to mitigate risk and to protect confidential information.
 - Improving contingency planning for business continuity, including information technology recovery, compliance with Homeland Security requirements, and crisis management strategies.
 - Achieving reliable, accurate and timely financial resources management information.
- 4. Providing excellent customer service.
 - Developing proactive initiatives focused on the retention of employees, including addressing pay differentials for examiners to bring base pay more in line with the examiner pay at other regulatory

PART 1. STRATEGIC PLAN

agencies, maintaining staffing to achieve the ideal level of 160 exam days annually for each examiner, mentoring, employee feedback, incentives, and recognition programs.

- Ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework.
 - Ensuring compliance with the rules, policies and procedures for ethical conduct by its employees.
 - Ensuring reliable, secure, modern information technology systems are in place in support of an environment that meets the Department's mission, goals, and objectives.
 - Ensure that ongoing training for examiners keeps pace with industry needs in areas such as information technology, member business loans, asset-liability management, compliance, etc.
 - Achieving reliable, accurate and timely financial resources management information.
5. Transparent such that agency actions can be understood by any Texan.
- Developing proactive initiatives focused on the retention of employees, including addressing pay differentials for examiners to bring base pay more in line with the examiner pay at other regulatory agencies, maintaining staffing to achieve the ideal level of 160 exam days annually for each examiner, mentoring, employee feedback, incentives, and recognition programs.
 - Maintaining a comprehensive Equal Employment and Workforce Diversity Plan.
 - Ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework.
 - Ensuring compliance with the rules, policies and procedures for ethical conduct by its employees.
 - Achieving reliable, accurate and timely financial resources management information.

DESCRIBE ANY OTHER CONSIDERATIONS RELEVANT TO YOUR GOAL OR ACTION ITEM

- The Commission sets the spending limits of the Department. As a SDSI agency, the Department continues to be self-funding and no General Revenue Funds are used to support its operation.
- Financial crimes consist of several broad categories such as fraud, money laundering, and corruption with many subcategories such as terrorist financing, identity theft, kickbacks, and bribery. The United States government has powerful tools to pursue financial criminals and the framework to force credit unions into compliance with a wide range of laws, such as the Bank Secrecy Act/Anti-Money Laundering and USA Patriot Acts. Financial crimes are a threat for credit unions and the Department alike. Having a knowledgeable and trained staff that understands the risks and how they can be managed is essential.
- No single factor is more critical to the Department's ability to accomplish its mission and to its success than its staff. Acquiring, developing, and retaining a competent workforce continues to be one of the Department's top priorities and is one of its four strategic goals. At the same time, and similar to the rest of state government, significant internal and external factors affect the Department's current and future workforce, challenging the Department's ability to ensure that the its staff is well trained, skilled, and capable of meeting the needs of the rapidly changing and growing complex industry.
- The Department operates and maintains its only office in Austin. Agency examiners work from their residences, located primarily in the Dallas/Fort Worth and Houston metropolitan areas. Because credit unions are located throughout the state, examiners may be required to travel extensively in examining credit unions with overnight travel of approximately 25 to 50 percent. Given the amount of potential travel, stationing field staff in these two metropolitan areas helps to minimize travel-related costs. The Department is solely responsible for the upkeep and maintenance of the Credit Union Department Building. Each year during the budgeting process, the Commission reviews and approves any necessary maintenance, major repairs, and long-term improvements.

REDUNDANCIES AND IMPEDIMENTS

PART 1. STRATEGIC PLAN

The agency does not have any services, state statutes, and state rules or regulations applicable to the agency that may result in barriers to the economic prosperity of Texans or make the agency less effective and efficient in achieving its core mission and merit additional executive and legislative review nor does the agency have any state services, state laws, and state regulations administered by the agency that are redundant, distract from the core mission of the agency, and/or produce workload costs for agency staff or regulated entities that may exceed the initial time, cost, or effort assumptions that existed when the law or regulation was implemented.

The statutes pertaining to the operation of the Department and the regulation and supervision of Texas state-chartered credit unions are considered comprehensive and current, and correctly delineate the Department's responsibilities and authorities. One impediment to the Texas state charter has been identified and detailed below. The Commission has the means by which to propose necessary statutory changes to the Legislature. TEX. FIN. CODE §§15.103 and 15.405, require the Department to periodically study the credit union statutes of the state and report its legislative recommendations to the Legislature for consideration. Notwithstanding these requirements, the Department continually reviews State of Texas statutes pertaining to credit union operations. The Commissioner, with the approval of the Commission, reports the recommendations of the Department as necessary to the Legislature for its consideration (TEX. FIN. CODE §15.405).

REDUNDANCIES AND IMPEDIMENTS (REPEAT SECTION AS NECESSARY FOR EACH IDENTIFIED REDUNDANCY AND IMPEDIMENT)	
SERVICE, STATUTE, RULE, OR REGULATION (PROVIDE SPECIFIC CITATION IF	TFC Section 123.003
DESCRIBE WHY THE SERVICE, STATUTE, RULE, OR REGULATION IS RESULTING IN INEFFICIENT OR INEFFECTIVE AGENCY OPERATIONS	The Act provides parity for Texas state-chartered credit unions with foreign and non-domesticated federal credit unions who operate a branch in Texas. However, parity is not provided to Texas state-chartered credit unions when a foreign state-chartered credit union is operating in Texas without a physical presence (i.e. through electronic delivery channels only). This puts Texas chartered credit unions at a competitive disadvantage to foreign state charters.
PROVIDE AGENCY RECOMMENDATION FOR MODIFICATION OR ELIMINATION	The Department recommends the removal of the language in TFC Section 123.003, which requires that a competing foreign credit union must have a branch in Texas, to be considered a competitor. Some institutions choose to provide services through electronic delivery channels without "brick and mortar" assets held in the state.

PART 1. STRATEGIC PLAN

DESCRIBE THE ESTIMATED COST SAVINGS OR OTHER BENEFIT ASSOCIATED WITH RECOMMENDED CHANGE	The benefit is that Texas chartered credit unions would meet the public policy requirements of ensuring Texas credit unions are able to maintain competitiveness with foreign state-chartered credit unions and ensure low-cost, safe financial services are available to Texas residents.
NATURAL DISASTER-RELATED REDUNDANCIES AND IMPEDIMENTS (IF APPLICABLE)	
SERVICE, STATUTE, RULE, OR REGULATION (PROVIDE SPECIFIC CITATION IF	NONE
DESCRIBE WHY THE SERVICE, STATUTE, RULE, OR REGULATION IS RESULTING IN INEFFICIENT OR INEFFECTIVE AGENCY	N/A
PROVIDE AGENCY RECOMMENDATION FOR MODIFICATION OR ELIMINATION	N/A
DESCRIBE THE ESTIMATED COST SAVINGS OR OTHER BENEFIT ASSOCIATED WITH	N/A

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE A: BUDGET STRUCTURE

AGENCY BUDGET STRUCTURE ELEMENTS (GOALS, STRATEGIES, MEASURES AND MEASURE DEFINITIONS) FOR THE 2023–24 BIENNIUM

AGENCY NAME: Credit Union Department

ELEMENT Identify the current Goal, Strategy, Measure or Measure Definition.	REQUESTED CHANGE	JUSTIFI- CATION FOR REQUESTED CHANGE	LBB OR OOG APPR'D	LBB / OOG COM- MENT	STATUS
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Outcome Measure: Percentage of Credit Unions Receiving Regular Examination Annually	None	None	NA		NA
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Outcome Measure: Percentage of Complete Applications Approved or Denied Within 60 Days	None	None	N/A		N/A
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Outcome Measure: Percentage of Credit Unions with Composite CAMELS Ratings of 1 or 2	None	None	NA		NA
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Outcome Measure: Percentage of Assets Held in Credit Unions with Composite CAMELS Ratings of 1 or 2	None	None	NA		NA
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Outcome Measure: Percentage of Credit Unions that are Well-Capitalized as defined by federal statute	None	None	NA		NA
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Output Measure: Percentage of Reports Mailed to the Office Within 25 Days	None	None	NA		NA

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE A: BUDGET STRUCTURE

AGENCY BUDGET STRUCTURE ELEMENTS (GOALS, STRATEGIES, MEASURES AND MEASURE DEFINITIONS) FOR THE 2023-24 BIENNIUM

Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Efficiency Measure: Department E-Time Ratio	None	None	NA		NA
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Examine Credit Union Operations</i> Outcome Measure: Assets Examined per Examiner Day	None	None	NA		NA
Goal 1: A Safe and Sound Credit Union Industry <i>Strategy: Ensure Efficiency of Examination Method</i> Efficiency Measure: Average time to complete analysis of quarterly financial data	None	None	NA		NA
Goal 2: A Flexible Regulatory Framework <i>Strategy: Provide Oversight of Department Operations</i> Outcome Measure: Percentage of Rule Changes Provided to Credit Unions Within 60 Days After Adoption	None	None	NA		NA
Goal 2: A Flexible Regulatory Framework <i>Strategy: Communicate with the Industry</i> Explanatory Measure: Percentage of interpretations/opinions issued within 30 days	None	None	NA		NA
Goal 3: Protect Credit Union Member Interests <i>Strategy: Investigate and Process Consumer Complaints</i> Efficiency Measure: Percentage of Complaints Investigated and Responded to Within 30 Days of Receipt	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Percentage of Exam Related Travel Costs Reduced by Remote Work	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Annual Examiner Turnover Ratio	None	None	NA		NA

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE A: BUDGET STRUCTURE

AGENCY BUDGET STRUCTURE ELEMENTS (GOALS, STRATEGIES, MEASURES AND MEASURE DEFINITIONS) FOR THE 2023-24 BIENNIUM

Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Efficiency Measure: Average Regulated Assets per Examiner (billion)	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Percentage of Purchases Made from HUBS Vendors	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Percentage of Credit Unions Indicating Quality Service Annually	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Staffing Levels	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Number of Job Fairs Attended	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Turnover Ratio (excluding retirements)	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Accreditation by NASCUS Maintained in Good Standing	None	None	NA		NA
Goal 4: Develop and Maintain Professional Staff <i>Strategy: Maintaining High Quality Staff</i> Explanatory Measure: Total Department Costs Relative to Every \$100,000 in Assets Regulated	None	None	NA		NA

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

Outcome Measure: Percentage of Credit Unions Receiving Regular Examination Annually
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Definition

The number of credit unions examined within an examination cycle of no more than 18 months during the fiscal year, expressed as a ratio of the total number of state-chartered credit unions for same period.

Purpose/Importance

This measure monitors the Department's performance in meeting the Commission's mandate and 7 TEX. ADMIN. CODE §97.105.

Source/Collection of Data

Supporting information regarding each examination is tracked in the Department's internal database.

Method of Calculation

Divide the number of credit unions examined during the reporting period by the total number of credit unions for the same period.

Data Limitations

None

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

75.0% annual

Outcome Measure: Percentage of Complete Applications Approved/Denied within 60 days
--

Definition

The number of complete applications approved or denied not later than the 60th day after the date notice of the applications are published, or after the date the applications are received if notice is not required to be published, expressed as a percentage of all applications approved or denied for the same period. Applications include applications for mergers, for charter conversions (federal to state, state to federal, state credit union to mutual savings associations, and mutual savings associations to state credit unions), for insurance conversions, and for amendments to bylaws and articles of incorporation. If an application is protested, it is not considered complete until responses from all parties have been received.

Purpose/Importance

Finance Code §122.005 requires the Commissioner to approve or disapprove applications not later than the 60th day after the date notice of the application is published, or after the date the application is received if the notice is not required to be published.

Source/Collection of Data

Supporting information regarding each application is tracked in the Department's internal database.

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SCHEDULE B. PERFORMANCE MEASURES

Method of Calculation

Divide the number of complete applications approved or denied not later than the 60th day after the date notice of the application is published, or after the date the application is received if the notice is not required to be published, whichever is later, by the total number of applications approved or denied during the same reporting period.

Data Limitations

Protests

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

100%

Outcome Measure: Percentage of Credit Unions with Composite CAMELS Ratings of 1 or 2

Definition

The number of credit unions with composite CAMELS rating of 1 or 2 during the applicable period based upon a rating system, expressed as a percentage of the total number of credit unions regulated for the same period.

Purpose/Importance

Measures the financial health of the Texas state-chartered credit unions. Ties directly to a statewide regulatory benchmark.

Source/Collection of Data

Supporting information regarding each examination is tracked in the Department's internal database.

Method of Calculation

Divide the number of credit unions assigned a composite CAMELS rating of 1 or 2 by the total number of credit unions for the same reporting period.

Data Limitations

Limited control over events that could lead a credit union to receiving a lower CAMELS rating.

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

85%*

**Changed from informational to a target goal.*

Outcome Measure: Percentage of Assets Held in Credit Unions with Composite CAMELS Ratings of 1 or 2
--

Definition

The consolidated total assets of credit unions with composite CAMELS rating of 1 or 2 as reported in

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SCHEDULE B. PERFORMANCE MEASURES

the designated quarterly call report based upon a rating system, expressed as a percentage of the consolidated total assets of all credit unions regulated for the same period.

Purpose/Importance

This informational measure indicates the financial health of the Texas chartered credit union industry. Ties directly to a statewide regulatory benchmark.

Source/Collection of Data

Quarterly financial and statistical Call Report data filed with the Department by each credit union.

Method of Calculation

Divide the consolidated total assets of credit unions assigned a composite CAMELS rating of 1 or 2 by the consolidated total assets of all credit unions for the same reporting period.

Data Limitations

Limited control over events that could lead a credit union to receiving a lower CAMELS rating.

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

95%*

**Changed from informational to a target goal.*

Outcome Measure: Percentage of Credit Unions That are Well-Capitalized as Defined by Federal Statute

Definition

A credit union is well capitalized if it has a net worth ratio of seven percent (7%) or greater and meets any applicable risk-based net worth requirements.

Purpose/Importance

Measures the financial health of the Texas state-chartered credit union industry based upon their level of net worth. Ties directly to a statewide regulatory benchmark.

Source/Collection of Data

Quarterly 5300 Call Report data filed with the Department by each credit union.

Method of Calculation

Divide the number of credit unions with a net worth ratio of seven (7%) percent or more by the total number of credit unions for the reporting period.

Data Limitations

Limited control over events that could lead to a credit union's net worth to decline.

Calculation Type

Noncumulative

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New Measure

Yes

Target Attainment:

95%

Output Measure: Percentage of Reports to Credit Unions Within 25 Days
--

Definition

The number of regular examination reports mailed to credit union management within 25 days of the last day on-site at the credit union, expressed as a percentage of the total number of examination reports mailed during the reporting period.

Purpose/Importance

The measure is an indication of the agency's efficiency in reporting examination findings back to the credit union's board of directors and key management.

Source/Collection of Data

Supporting information regarding each examination is tracked in the Department's internal database.

Method of Calculation

Divide the number of reports of examination processed and mailed to credit unions within 25 days after the last day the examiners are on-site by the total number of reports of examination processed for the same period.

Data Limitations

None

Calculation Type

Noncumulative

New Measure

Yes

Target Attainment:

98%

Efficiency Measure: Department E-Time Ratio
--

Definition

The E-Time Ratio is the percentage of all Field Examiners (excluding the Field Supervisors) paid time that is actively spent performing examinations.

Purpose/Importance

This measure assesses efficient usage of Field Examiners' time for the entire Department. The measure also allows the Department to assess efficiency of Field Examiners on an individual basis and by assigned zone (i.e. A, B, etc.).

Source/Collection of Data

Tracked from a monthly report generated in the CAPPs time management system. That report identifies the aggregate exam hours for each examiner for the month. This data is input into a monthly e-time

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

spreadsheet, which automatically computes the E-Time Ratio for each Field Examiner, each zone and for all Department Field Examiners. The E-Time Ratio for all field examiners is the performance measurement in the above definition.

Method of Calculation

The E-Time Ratio is computed by taking the Aggregate Exam Hours for a specific period (i.e. monthly, annually, etc.), divided by the Total Hours Available for Examinations for all Field Examiners (excluding Field Supervisors) for the same period.

The Aggregate Exam Hours include all time charged for all regular examination work both on-site and off-site, remedial examination work both on-site and off-site, and all remote examination work. It also includes on-the-job training hours for new Examiners (Assistant Examiners) who have not yet completed six full months (excludes partial months) of examination training. The Total Hours Available for Examinations is the Days Available for Examinations multiplied by the total number of Field Examiners, multiplied by the work hours (8) in a day. The Days Available for Examinations equals the total number of weekdays (M-F) for the period (i.e. monthly, annually, etc.) being measured, less the number of state and federal holidays which occur on a weekday during the same period.

Data Limitations

None

Calculation Type

Cumulative

New Measure

No

Target Attainment:

65%

Outcome Measure: Assets Examined per Examiner Day
--

Definition

Total assets examined by the Department over the reporting period, divided by the total regular examination days related to those specific examinations.

Purpose/Importance

To assist in review of the efficiency of the Department's examinations, and to benchmark against other regulators.

Source/Collection of Data

Financial information is obtained during each regular examination and is uploaded into the Department's database.

Method of Calculation

To calculate the assets examined per examiner day, run the Regular Exams Received Report for the appropriate fiscal quarter. Divide the sum of the total assets examined by the total examination days, under the header "curr" (Total exam days for the most recent examination).

Data Limitations

Calculation Type

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SCHEDULE B. PERFORMANCE MEASURES

Increase in asset size of credit unions due to mergers, consolidations, etc.;

Noncumulative

New Measure

No

Target Attainment:

\$14.0 Million

Efficiency Measure: Average Time to Complete Analysis of Quarterly Financial Data
--

Definition

The number of calendar days required for Field Staff to analyze and report to the office their initial risk ratings for credit unions under the Department's jurisdiction based upon the quarterly financial results from the 5300 Call Reports that credit unions submit.

Purpose/Importance

To measure off-site monitoring efficiency. The call reports are a significant tool for the Department in identifying and addressing financial operating changes in a credit union between quarterly reports so that prompt, effective supervisory action can be taken when needed.

Source/Collection of Data

Call report data serves as the basis for the report. Call reports are required to be sent to the Department. Department staff validates each call report received.

Method of Calculation

Credit unions are required by the NCUA to submit their quarterly 5300 Call Reports on or before a certain date, each calendar quarter. That date will be the starting point for purposes of this measure. The date that the Field Supervisors forward their completed reviews of the Financial Performance Report (FPR) dashboard worksheets for their respective zones to the office marks the end date. The elapsed days between the two dates is the measure of performance.

Data Limitations

Turnover of key staff could slow down the review process of Quarterly FPRs.

Calculation Type

Noncumulative

New Measure

Yes

Target Attainment:

Within 30 days

Outcome Measure: Percentage of Rule Changes Provided to Credit Unions Within 60 Days After Adoption
--

Definition

The number of new, amended, and readopted rules that are mailed out within 60 days of their final adoption by the Commission.

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

Purpose/Importance

The measure indicates how quickly credit unions are informed of changes affecting their operations or Department operations.

Source/Collection of Data

The date a new, amended, or readopted rule is adopted, as well as the date the letter of transmittal for the Texas Laws and Regulations for Credit Unions are sent out to credit unions, is entered into a database and tracked accordingly.

Method of Calculation

Divide the number of rule changes provided to credit unions within 60 days of the effective date of their adoption by the number of rule changes adopted during the same reporting period.

Data Limitations

None

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

100%

Explanatory Measure: Percentage of Interpretations and Opinions Issued Within 30 Days of Receipt
--

Definition

The number of written requests for interpretations and opinions responded to within 30 days of receipts, expressed as a ratio of all requests for interpretations and opinions responded to within the applicable time period. A request for an interpretation or opinion must be in writing, must concern an existing statute or Commission rule, and must be responded to by the Commissioner or his designee.

Purpose/Importance

This measure provides an indication of the responsiveness of the Department in handling requests for interpretations and opinions responded to for the applicable period.

Source/Collection of Data

Department staff maintains a correspondence database that flags requests for interpretations or opinions. The database tracks the date correspondence is received, the name of the party from whom it is received, subject of the correspondence, whether it is a request for an interpretation or opinion, the date the Department's response was sent, and the number of days elapsed between the receipt and response dates. The database is updated daily.

Method of Calculation

Divide the number of interpretations and opinions issued within 30 days of receipt by the number of requests for interpretations and opinions responded to for the applicable period.

Data Limitations

Calculation Type

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

If the nature of the request is such that the matter must be referred to the Attorney General's Office, the Department would be unable to respond within 30 days.

Cumulative

New Measure
Yes

Target Attainment:
100%

Efficiency Measure: Percentage of Complaints Investigated and Responded to Within 30 Days of Receipt

Definition

The number of written complaints from credit union members or members of the public, relating to actions or inactions of a state-chartered credit union, which are investigated and responded to in writing within 30 days of receipt of the complaint, expressed as a percentage of all complaints responded to for the applicable time period.

Purpose/Importance

This measure provides an indication of the responsiveness of the Department in handling consumer complaints.

Source/Collection of Data

When the Department receives a written complaint, the following information is entered into a database: the date the complaint is received, name of the complainant, the name of the credit union, and the nature of the complaint. When resolved, the date closed and the cost of handling the complaint is entered into the database. The elapse time is then generated by the program.

Method of Calculation

Divide the number of written consumer complaints received and responded to within 30 days of their receipt by the number of consumer complaints responded to during the applicable period. A complaint is considered received once the complainant has provided sufficient information regarding the nature of the complaint for the Department to begin an investigation. The investigation includes obtaining a response from the subject credit union. A complaint is considered closed when the Department has sent a response to the complainant.

Data Limitations

No control over a credit union's response time

Calculation Type

Noncumulative

New Measure
No

Target Attainment:
95%

Explanatory Measure: Percentage of Exam Related Travel Costs Reduced by Remote Work
--

Definition

Travel cost savings for performing examinations remotely divided by total examiners' travel costs.

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

Purpose/Importance

Because turnover results in a less experienced staff, this measure is one indicator of the Department's ability to meet its goals.

Source/Collection of Data

The Department's monthly financial statements will break down examiners' total travel costs, while the monthly time management reports will break down total examination hours. Total examination hours include all time charged to exam hours onsite and offsite, remedial exam hours onsite and offsite, exam remote e-time, and remedial remote e-time.

Method of Calculation

Total examiners' travel costs divided by total examination hours (regular and remedial) to arrive at examiner's average travel cost per examination hour. The average cost is then multiplied by the total hours of examination time performed remotely to compute travel costs savings. Divide the total costs savings amount by the examiners' total travel costs to arrive at the percentage reduction of examination related travel costs.

Data Limitations

None

Calculation Type

Noncumulative

New Measure

Yes

Target Attainment:

20%

Explanatory Measure: Annual Examiner Turnover Ratio
--

Definition

The number of examiner resignations (excluding retirements) as a percentage of the number of filled examiner positions.

Purpose/Importance

Because turnover results in a less experienced examination staff, this measure is one indicator of the Department's ability to meet the examination completion-related goals.

Source/Collection of Data

New hires, resignations, and the reasons given for resignations are tracked in a spreadsheet by the Staff Services Officer.

Method of Calculation

Divide the number of examiner resignations (excluding retirements) received during a reporting period by the average number of examiner FTEs for the same period.

Data Limitations

Very limited control over examination staff turnover. Most Resign because of less than competitive salaries and/or excessive Travel. Salaries limited by levels in state classification plans and

Calculation Type

Noncumulative

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

budgetary constraints.

New Measure

Yes

Target Attainment:

<16%

Efficiency Measure: Average Regulated Assets (in billions) per Examiner
--

Definition

The total amount of credit union assets regulated per examiner.

Purpose/Importance

This measure is an indicator of the workload placed on the agency's examination staff.

Source/Collection of Data

Each credit union files a quarterly financial performance report (FPR), which contains various financial reporting schedules and includes the credit union's total assets. The Department pulls an aggregate FPR for the reporting period which includes the total assets for all state-chartered credit unions.

The number of examiners on staff is maintained on the Uniform Statewide Payroll System (USPS) system. Report 21 can be used to verify staff paid each month for the reporting period and to determine the number of examiners.

Method of Calculation

Divide the total assets of state-chartered credit unions by the average number of examiners on staff during the reporting period. Average number of examiners is the cumulative number of examiners on staff (excluding Field Supervisors) at the end of each month, divided by the number of months in the reporting period.

Data Limitations

No control industry asset growth

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

\$3.0 billion

Explanatory Measure: Percentage of Purchases Made from HUBS Vendors
--

Definition

The number of purchases made from vendors who are designated as a historically underutilized business divided by the number of purchases made for the reporting period. This does not include travel or transactions between agencies. It does include TIBH.

Purpose/Importance

This measure tracks the Department's compliance with Chapter 2161 of the Government Code.

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

Source/Collection of Data

The Department's Staff Services Officer maintains the list of contracts awarded and which are designated as a HUB.

Method of Calculation

Divide the total number of purchases made form HUBs for the reporting period by the total aggregate number of purchases made by the Department for the reporting period, including TIBH, and excluding travel and transactions between agencies.

Data Limitations

No control over vendors who may be interested in Providing services at the lowest cost to the agency.

Calculation Type

Non-cumulative

New Measure

Yes

Target Attainment:

Goals established by
Comptroller's Office

Explanatory Measure: Percentage of Credit Unions Indicating Quality Service Annually
--

Definition

The number of credit unions indicating the Department provides quality service, expressed as a percentage of the number of credit unions responding to that question on the annual survey.

Purpose/Importance

This measure provides an indication of the state-chartered credit union industry's perception of the quality of regulation and supervision received from the Department.

Source/Collection of Data

The Department sends out a survey each March to all state-chartered credit unions. One of the questions asked on the survey is "Do you believe the Department provides your credit union with quality service?"

Method of Calculation

Divide the number of credit unions reporting receipt of quality service from the Department by the number of credit unions responding to that question on the survey.

Data Limitations

Responding to the survey is voluntary. The Department cannot control the number of responses received.

Calculation Type

Noncumulative

New Measure

Yes

Target Attainment:

90%

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

Explanatory Measure: Staffing Levels

Definition

Number of actual Full Time Equivalents (FTEs) divided by the number of authorized FTEs.

Purpose/Importance

To ensure the Department is adequately staffed to provide the necessary regulatory oversight of Texas state-chartered credit unions.

Source/Collection of Data

A roster of all actual FTEs is maintained by the Staff Services Officer. Authorized FTEs are detailed in the Department's Annual Operating Plan and Budget approved by the commission each year.

Method of Calculation

The number of actual FTEs at month-end is divided by number of authorized FTE's for the applicable fiscal year.

Data Limitations

No control over staff turnover

Calculation Type

Noncumulative

New Measure

No

Target Attainment:

95%

Explanatory Measure: Number of Job Fairs Attended
--

Definition

The actual number of job fairs attended during the fiscal year. Job fairs are events where the Department provides job related information to potential employment candidates.

Purpose/Importance

To assist the Department in identifying potential applicants for examination staff positions. It is imperative for our agency to maintain adequate examiner staffing levels in order that we may provide the necessary regulatory oversight of Texas state-chartered credit unions.

Source/Collection of Data

A monthly training report, which includes job fairs attended, is maintained by both Field Supervisors. The report is submitted monthly to the Executive Assistant to the Commissioner.

Method of Calculation

The Executive Assistant reviews the monthly training report provided by the Field Supervisors and counts the number of job fairs attended.

Data Limitations

None

Calculation Type

Noncumulative

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

New Measure
Yes

Target Attainment:
Two per fiscal year

Explanatory Measure: Turnover Ratio
--

Definition

The number of staff resignations (excluding retirements) as a percentage of the number of staff positions.

Purpose/Importance

Because turnover results in a less experienced staff, this measure is one indicator of the Department's ability to meet its goals.

Source/Collection of Data

New hires, resignations, and the reasons given for resignations are tracked in a spreadsheet by the Staff Services Officer.

Method of Calculation

Divide the number of staff resignations (excluding retirements) received during a reporting period by the total number of staff FTEs for the same period.

Data Limitations

No control over staff turnover

Calculation Type

Non-cumulative

New Measure
No

Target Attainment:
<15%

Explanatory Measure: Accreditation by NASCUS Maintained in Good Standing

Definition

The Department is accredited by the National Association of State Credit Union Supervisors (NASCUS) as of the end of the reporting period.

Purpose/Importance

NASCUS accreditation is a national standard of excellence among credit union regulators. The Department must maintain its accreditation in order to maintain credibility among federal regulators and the national Congress.

Source/Collection of Data

A certificate of accreditation is awarded to the Department. This is displayed in the reception area of the Department's building.

Method of Calculation

Determine if annual NASCUS accreditation is in good standing. If so, answer "YES".

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE B. PERFORMANCE MEASURES

Data Limitations

None

Calculation Type

Noncumulative

New Measure

Yes

Target Attainment:

Yes

Explanatory Measure: Total Department Costs Relative to Every \$100,000 in Regulated Assets

Definition

The fiscal year costs to operate the Department divided by Regulated Assets (Total regulated assets divided by \$100,000).

Purpose/Importance

This measure compares total operating costs to every \$100,000 of assets being regulated and supervised by the Department to evaluate the reasonableness of the costs of service delivery to the size of the Industry under the jurisdiction of the Department.

Source/Collection of Data

The Department's Annual Financial Report (AFR) will serve as the basis for determining the fiscal year costs. The aggregate total of credit union assets used to calculate the operating fees at the beginning of the fiscal year (June 30 Consolidated Financial Performance Report numbers for all Texas chartered credit unions) will serve as the basis for the total assets regulated by the Department for the fiscal year.

Method of Calculation

The numerator for this calculation is the fiscal year costs, and the denominator is the aggregate total of credit union assets divided by \$100,000.

Data Limitations

Could change dramatically if conversion or mergers result in significant changes to regulated assets. Staff turnover or an increase in the risk profile of credit unions requiring increased oversight could also impact the calculation.

Calculation Type

Cumulative

New Measure

Yes

Target Attainment:

\$9.44

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULE C. HISTORICALLY UNDERUTILIZED BUSINESS PLAN

HUB 7.07 REPORT CREDIT UNION DEPARTMENT 469 INTERNAL ASSESSMENT ON UTILIZATION OF HUBS POLICY COMPLIANCE REPORT

Demonstrating Compliance with HUB Purchasing Requirements

The Department consistently contacts Historically Underutilized Businesses (“HUBs”) for bids on spot purchases and small dollar amount procurements. Due to budget constraints, products and services are obtained from the lowest bidder. In addition to its HUB policy, the Department has a HUB Diversity Plan to ensure that our HUB purchases represent as many different minority and women-owned businesses as possible.

Although the Department has limited opportunities to award contracts, it makes every effort to foster meaningful and substantive inclusion of HUBS in the Department’s procurement processes. In addition, the Department makes every effort to ensure that it makes its purchases from a diverse group within the HUBs.

The Department has adopted a policy to achieve the proportional HUB expenditure targets established by the Texas Comptroller of Public Accounts and monitors its progress toward achieving these goals. The Department reviews this policy annually and the Department has a designated HUB coordinator, its Staff Services Officer.

The Department’s Agency Strategic Plan for 2021-2025 states the Department’s policy is to achieve the proportional HUB expenditure targets established by the Texas Comptroller of Public Accounts. **During fiscal year 2020 and fiscal year 2021, the Department has exceeded its HUB targets in the various categories.**

The total amount of expenditures with HUBs for fiscal year 2021 was \$126,814 and the total amount of non-HUB expenditures was \$45,211. In fiscal year 2020, the total amount of expenditures for HUBs was \$71,129 and the total amount of non-HUB expenditures was \$52,320.

Attached is a copy of the Department’s HUB Consolidated Agency Report for fiscal year 2020 and fiscal year 2021. **Both reports show that the Department exceeded its HUB goals.**

The Department only purchases from two procurement categories: other services and commodity purchasing. During fiscal year 2020, the Department’s HUB purchases for other services were 45.60 percent, which was over the stated goal of 26.0 percent and the Department’s HUB commodity purchases were 75.52 percent, which was over the stated goal of 21.1 percent. During fiscal year 2021, the Department’s HUB purchases for other services were 68.90 percent, over the stated goal of 26.0 percent and the Department’s HUB commodity purchases were 84.68 percent, over the stated goal of 21.1 percent.

PART 2. SUPPLEMENTAL ELEMENTS**SCHEDULE C. HISTORICALLY UNDERUTILIZED BUSINESS PLAN****HUB PARTICIPATION**

	FY20	FY21
Total Agency Expenditure	\$123,449	\$172,026
Total Dollar Amount Spent with HUBs	\$71,129	\$126,814
Percent of Total Expenditure Spent with HUBs	57.62%	73.72%
Women	\$63,040	\$109,909
Black	\$1,971	\$1,443
Hispanic	\$0	\$5,550
Asian-Pacific	\$4,223	\$7,987
Native-American	\$1,895	\$1,923

Plans to Maintain Compliance

The Department is strongly committed to using HUBs for purchases in future years to maintain its excellent compliance record. The Department will continue to include HUB policies, goals, and programs in its strategic plan. The Department will continue to contact HUBS for bids on spot purchases and small dollar amount procurements. The Department will continue to make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases in accordance with 34 TAC §20.13. The Department will continue to meet state reporting requirements and optional reporting requirements for self-directed and semi-independent agencies, such as this reporting requirement. The Department annually updates its HUB policy and will continue to maintain its HUB Diversity Plan to ensure that our HUB purchases represent as many different minority and women-owned businesses as possible.

Although the Department has limited opportunities to award contracts, the Department will continue to make every effort to foster meaningful and substantive inclusion of HUBS in the Department's procurement processes.

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULES D. STATEWIDE CAPITAL PLANNING AND E. HHS STRATEGIC PLANNING

SCHEDULE D: STATEWIDE CAPITAL PLANNING

NOT APPLICABLE

SCHEDULE E: HEALTH AND HUMAN SERVICES STRATEGIC PLANNING

NOT APPLICABLE

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULES F. AGENCY WORKFORCE PLAN AND THE TEXAS WORKFORCE SYSTEM STRATEGIC PLAN



Credit Union Department Fiscal Year 2023-2024 Workforce Plan

I. Agency Overview

The Department was established as a separate agency in 1969 to supervise and regulate state-chartered unions. This is accomplished through annual examinations of each credit union to ensure enforcement of laws, rules, bylaws, and sound business practices, imposing appropriate administrative sanctions, diligent monitoring between examinations, and aggressive remedial efforts when needed.

The administrative office of the agency is domiciled in Austin, but field examiners are based in Dallas/Fort Worth, Austin and Houston. The largest percentage of employees are directly associated with the examination process including field examiners, a Director of Examination Support Activities, an executive assistant and the Deputy Commissioner. The remaining positions include the Commissioner, Director of Information Systems and Technology, Network Specialist and supporting staff in Austin (See Appendix B: CUD Organizational Chart).

The Department currently is authorized for 31.0 full time equivalents (FTEs) and is considering expanding the workforce due to increases in the complexity and assets of regulated credit unions. Operating fees paid by the credit unions cover all agency expenses, including payments to other state agencies, such as the Office of Attorney General, for services performed.

A. Agency Mission

The mission of the Credit Union Department is to safeguard the public interest, protect the interests of credit union members and promote public confidence in credit unions industry in accordance with TEX. FIN. CODE §15.102.

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULES F. AGENCY WORKFORCE PLAN AND THE TEXAS WORKFORCE SYSTEM STRATEGIC PLAN

B. Strategic Goals and Objectives

The Texas Credit Union Department has three main goals

Goal A	EFFECTIVE SUPERVISION AND REGULATION
Objective	To effectively supervise and regulate state-chartered credit unions through enforcement of safety and soundness standards and compliance with the Texas Finance Code, and in a manner that balances the interest of the membership and the need for public confidence in the credit union system.
Strategies	<ul style="list-style-type: none">• Examine all credit unions within 18 months of the previous examination• Take appropriate enforcement action in problem credit unions• Perform remedial examinations when necessary• Respond promptly to member complaints• Respond promptly to requests for interpretations or opinions• Process applications in a timely manner

Goal B	ENSURE SAFETY AND SOUNDNESS
Objective	Through interaction with the Credit Union Commission and the Legislature, recommend statutory and rule changes to ensure that credit unions operate in a safe and sound manner in a competitive and ever-changing financial services industry.
Strategies	<ul style="list-style-type: none">• Promulgate new and amended rules• Recommend statutory changes to the Legislature• Provide oversight of departmental operations

Goal C	PROCUREMENT USING HISTORICALLY UNDERUTILIZED BUSINESSES
Objective	To establish and carry out policies governing purchasing and public works contracting which foster meaningful and substantive inclusion of historically underutilized businesses.
Strategies	<ul style="list-style-type: none">• Contact HUB contractors for bid proposals• Purchase from state contracted HUB providers

C. Anticipated Changes in Strategies

The agency does not anticipate major changes to its business or workforce strategies. Offsetting the decline in the number of state-chartered credit unions is the increase in total assets of credit unions. The current growth in assets of state-chartered credit unions has come primarily from pandemic stimulus deposits, and expansion of field of membership and services offered by existing credit unions.

Using a risk-focused examination process, examiners give additional attention to the areas of operation that have been identified in a risk assessment. Because of the disparity in the size and complexity of credit unions,

PART 2. SUPPLEMENTAL ELEMENTS

SCHEDULES F. AGENCY WORKFORCE PLAN AND THE TEXAS WORKFORCE SYSTEM STRATEGIC PLAN

examiners remain generalists in terms of their expertise. However, each examiner is assigned a discipline (lending, investments, internal controls, compliance, information technology, etc.) of the examination process during their first year of employment. Subsequently, they are provided with more specific training in their discipline. The area of discipline for each examiner is assigned based on each examiner's preference and the availability of a discipline.

Due to the increased use of information technology in credit union operations and the critical need for adequate back up and security for these systems, the scope of the reviews for the information technology portion of examinations continues to expand. Most credit unions perform third-party information technology audits which the examiners review, and/or are hiring qualified third parties to perform specific information technology functions.

Between 2018 and 2020, the NCUA utilized the Automated Cybersecurity Examination Tool (ACET) to conduct cybersecurity maturity assessments of all federally insured credit unions to determine their cybersecurity preparedness. Over the three-year period, the tool was used on all state-chartered credit unions with over \$100 million in assets. Beginning in 2020, the NCUA began transitioning its priority from performing the ACET assessments to evaluating critical security controls. They also initiated a pilot called Information Technology Risk Examination solution for Credit Unions (InTREx-CU). InTREx harmonizes the IT and Cybersecurity examination procedures shared by the Federal Deposit Insurance Corporation, the Federal Reserve System and many state regulators. The In-TREx-CU pilot will end no later than August 2022, at which time the results from InTREx-CU exams will be utilized to improve the overall effectiveness of the existing examination program. Moving forward, it is anticipated that the Department's role in performing these reviews will increase.

II. Current Workforce Profile

A. Critical Workforce Skills

The agency has a core group of qualified employees at the present time. The examiners, which represent most of the Department's employees, must have major course work in accounting, finance, economics, business administration or a job-related field with a minimum of six hours, nine preferred, in accounting (including basic and intermediate accounting). Other skills that are important to the agency's ability to perform our business function include:

- Financial statement analysis
- Investment analysis
- Proficient oral and written communication
- Investigative
- Loan analysis
- Internal control analysis
- Information technology analysis

The support staff must also possess skills that are critical to the operation of the agency. These skills include:

- Database development and maintenance
- Customer service
- Document processing
- Accounting/Payroll

B. Workforce Demographics

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The following profiles the agency's workforce as of August 31, 2021. The agency was authorized 30.0 FTEs for fiscal year 2021. The CUD workforce is comprised of 53.8 percent males and 46.2 percent females. Just over two-thirds, or 69 percent, of the employees are over the age of 40. The average tenure of an agency employee declined during the last two years, from 11.6 to 8.5 years; and the average tenure of the sixteen field examiners at FYE 2021 is 7.4 years, down from the 9.6-year average from two years ago. Four examiners have been with the Department less than two years; while two examiners have been with the agency between two and less than five years. The remaining ten examiners have been on staff or greater than five years.

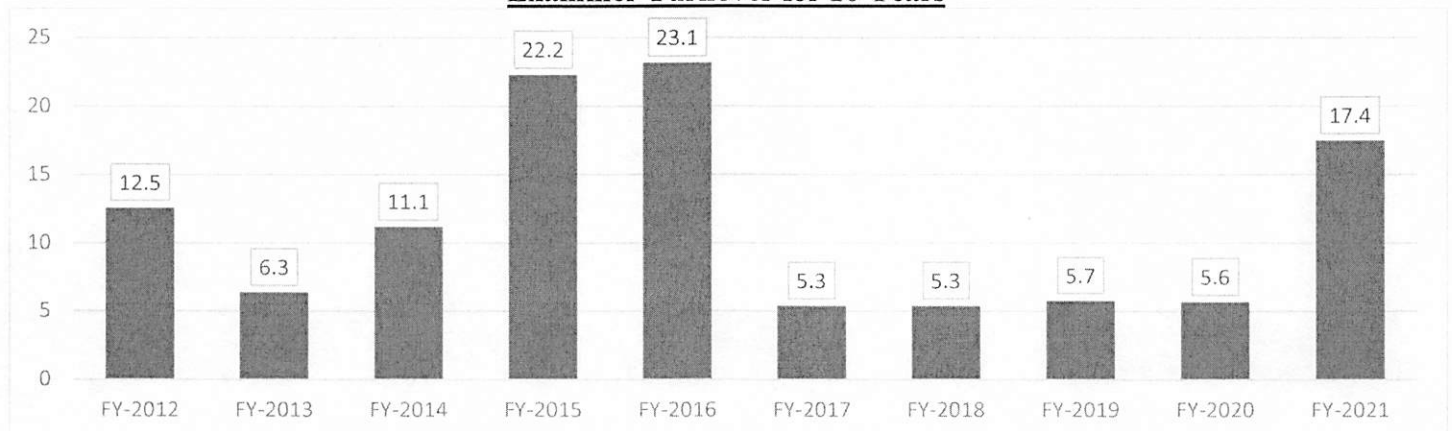
The ethnic breakdown of the workforce is 35 percent Anglo, 27 percent African American, 23 percent Hispanic and 15 percent Other. The 2010 Census showed a Texas population that was 39.8 percent Anglo, 11.8 percent African American, 39.3 percent Hispanic, and 9.1 percent Other. The Hispanic population in the state of Texas is on pace to surpass the white population during 2022.

C. Employee Turnover

Employee turnover is experienced by every business entity or governmental agency. It is costly to continually train new employees, diminishes efficiency of the staff, and adversely affects employee morale. Historically, the Credit Union Department has experienced high examiner turnover rates, attributable to non-competitive salaries, extensive travel requirements, and the nature of the work as a regulatory agency. Management and support staff positions remained constant during the same period. Examiners with experience in excess of 2-3 years become attractive to credit unions due to their wide diversity of experiences, and familiarity with credit union laws and regulations. Experienced examiners were also attracted to the National Credit Union Administration (NCUA), the federal regulator, by higher salaries, less travel, and, in some cases, a recruitment bonus.

During the ten-year period from FY 2012 to FY 2021, seven examiners (average tenure of 55 months) were hired by credit unions and three examiners (average tenure of 29 months) were hired by NCUA. Another twelve examiners left employment with an average tenure of 80 months. Two of the twelve examiners were Field Supervisors who retired after approximately 26 years each with the Department. Excluding those individuals, the average tenure of the other ten examiners who left employment was 34 months.

Examiner Turnover for 10 Years



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D. Retirement Eligibility

The agency was created in 1969, but through the years, very few employees have remained with the agency until retirement. Three employees retired in the early 1970s soon after the agency became independent from the Banking Department. Based on available information since 1996, eighteen additional employees have retired from the agency. Four employees retired between 1996-2002, one medically; two employees retired at the end of FY 2003, prompted by the retirement incentive package authorized by the 78th Legislature; and two employees retired in fiscal year 2013. Additionally, since the beginning of FY2015 the pace of retirements within the Department has increased rapidly with ten employees having retired. Two retired in FY2016, one in FY2017, one in FY2018, one more in FY2019, three in FY2020 and two in FY2021. Furthermore, as of the beginning of FY2022, two employees are currently eligible for retirement, two more employees are eligible within the next 2 years, four more within 5 years and an additional three employees are eligible within 8 years. With approximately 15 percent of existing staff being eligible to retire within 2 years, approximately 31 percent within 5 years, and 42 percent eligible within 8 years, proper succession planning is critical to ensure the identification and development of potential successors for key positions. The ability to staff the office positions over the next 5 years could be a critical challenge, with six of the eleven (55%) office staff members eligible for retirement during that time. Of those six; one is currently eligible to retire; two are eligible within 2 years; and the remaining three are eligible within 4 years.

E. Other Considerations

While there is now an improved beginning salary for examiners, retention of experienced examiners will still be a problem as financial institutions and federal agencies continue to pay higher salaries and require less travel. Agency wide, the turnover rate is expected to stay between 5 to 15 percent annually. The Department continues to assess pay levels, other benefits and work condition enhancements to improve examiner retention.

III. Future Workforce Profile

A. Critical Functions

- Risk based examination program
- Electronic delivery of examinations
- Offsite monitoring
- E-commerce security

B. Expected Workforce Changes

- Increased use of technology to revise and streamline work processes

C. Anticipated Increase/Decrease in Number of Employees Needed to Do the Work

- The FTE count is anticipated to increase by up to three over the next two years to ensure continuity of service and address the increasing complexity of credit union examinations.

D. Future Skills Needed

To effectively perform and process examinations, the agency relies upon a competent and knowledgeable staff. The skills mentioned previously under *Critical Workforce Skills* should be constant for the future; no immediate new skill requirements are anticipated at this time. As employees gain more tenure and experience,

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their skills should become more refined; employees whose skills do not significantly improve or expand may not be retained.

IV. Gap Analysis

A. Anticipated Surplus or Shortage of Workers or Skills

After analyzing the workforce information, the Credit Union Department believes that there is only one main gap between the agency's workforce supply and demand that needs to be addressed.

1. Attracting and retaining the right employees for the job

- Competing for business majors with at least 6 hours of accounting
- Younger employees are not staying with the agency
- Assuring experienced, well-performing employees of regular salary increases and competitive salaries

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V. Strategy Development

Gap	Attracting and Retaining the Right Employees
Goal	Become an employer of choice and offer career opportunities
Rationale	There is a competitive job market for qualified individuals with the skills required to perform the duties of an examiner. The agency will continue to reward exceptional performance within statutory limitations, provide staff development through training opportunities, and provide career opportunities, and support innovation and excellence.
Action Steps	<ul style="list-style-type: none">• Continue regular pay increases for high performance• Consistently survey the market for similar positions to ensure the salaries being offered to our staff are competitive.• Allow employees who are seeking new challenges to work on special projects, or assign development projects

Gap	Train and Mentor Employees
Goal	Develop staff where they can progress to key positions, as those key opportunities become available.
Rationale	There is a high concentration of existing Department employees in key positions who are either eligible for retirement, or will become so, during the next 5 years. The agency must identify high potential staff and provide them with the tools and training necessary to fill key positions which are vacated due to retirement. Those identified as high potential employees must be placed on a fast track approach for development and know that they have strong career prospects with the Department. The agency will continue to reward exceptional performance within statutory limitations, provide staff development through training opportunities, and provide career opportunities, and support innovation and excellence.
Action Steps	<ul style="list-style-type: none">• Continue regular pay increases for high performance.• Allow employees who are seeking new challenges to work on special projects or assign development projects.• Identify above average performers and put them on a fast track approach for their career path.• Implement a training approach for high potential staff which focuses on accelerating their development and advancement with the agency.

Given the increasing size and complexity of the credit unions we regulate, the Credit Union Department is anticipating some significant changes regarding examiner staffing and the examination processes during the next 2-3 years. Currently, the agency has only 31.0 authorized FTEs (as of FY 2022), of which 19.0 FTEs are currently allocated for field examiner positions. Furthermore, possible retirements soon could adversely affect the organization, both in the field and in the office. Within the next 4 years a total of eight (8) employees, or approximately 26 percent of all Department staff (when fully staffed), will be eligible for retirement. Proper

PART 2. SUPPLEMENTAL ELEMENTS

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succession planning will be critical to ensure the identification of staff for key positions if significant turnover occurs due to retirements, whenever that may be. The Department will need to devote adequate resources to mentoring and supporting less tenured examiners to ensure they gain the skills and experience to carry out the responsibilities which are needed to progress rapidly with the Department.

F

DEPARTMENT'S SURVEY OF EMPLOYEE ENGAGEMENT

F. Review the Results of the Employee Engagement Survey.

BACKGROUND: The survey reviews Department employees' viewpoints over 12 constructs including: Workgroup, Strategic, Supervision, Workplace, Community, Information Systems, Internal Communication, Pay, Benefits, Employee Development, Job Satisfaction and Employee Engagement. Our Response rate rose 1.3% to 69.2% of total employees. Overall, the survey indicates employees' responses are complimentary of the Department and have improved from the previous survey. Only two "issue" constructs (with a score below 400) were identified, although they both improved from the last survey. Those constructs were Pay and Job Satisfaction.

Highlighting a few areas of the report, our performance improved from the previous biennial survey in all categories except one, which remained steady (Employee Development) with no change. Our largest score improvements from the previous review were in information systems, internal communication and community.

The Department has conducted meetings at the executive level, mid-management and employee level to ascertain our employees' perspective on the survey results.

The primary friction points provided by staff included:

- Lack of ability to achieve travel stipends due to the remote nature of work the last two years.
- Unsupported costs of working remotely during the pandemic,
- Difficulties in achieving training venues, and
- Quality of life issues due to current staffing levels

RECOMMENDED ACTION: No Action is anticipated.

**ANY ADDITIONAL MATERIAL WILL BE SUPPLIED
AT THE MEETING**

G

PROPOSED REVISIONS TO COMMISSION POLICIES MANUAL

G. Discussion, Consideration, and Possible Vote to Take Action to Approve Proposed Amendments to the Commission's Policy Manual, as Part of its Annual Policy Review, to (1) Revise the Weapons Policy, (2) the Legal Counsel Section XIV, and (3) to make Formatting Changes.

BACKGROUND: The following amendments to the Commission's Policy Manual are recommended by the Department to address recent changes in the law regarding open carry of handguns as reflected by HB 1927, the new General Counsel, and formatting issues with the current style of the Manual.

These changes include (1) revising the current language of the Weapons policy to reflect HB 1927; (2) revising the Legal Counsel Section XIV to include a description of the General Counsel's representation and updating language regarding representation from the Attorney General's Office of Texas; and (3) formatting changes throughout the Manual.

RECOMMENDED ACTION: The Department recommends that the Commission approve the suggested revisions and any others it deems necessary to the Commission Policy Manual.

RECOMMENDED MOTION: I move that the record reflect that the Commission reviewed the Commission Policy Manual and approved the proposed changes as recommended.



Texas Credit Union Commission

Policy Manual

Revised: ~~June 18, 2024~~ March 11, 2022

ADOPTIONS

These policies were reviewed and adopted by the Credit Union Commission at a regular meeting on July 12, 1991.

Section IX. T was revised on September 11, 1992. Section IX. U was added on March 5, 1993.

Section IX. T was revised on February 14, 1994. Section IX. V was added on August 5, 1994.

On February 13, 1995, the following revisions and addition were adopted by the Credit Union Commission:

Section II E 3 and II E 4 were revised; Section III F and III J were revised; Section IX G, IX T 2, and IX U were revised; and, Section IX W was added.

On July 12, 1996, the following addition and revision were adopted:

The Decision Matrix was added in an Appendix; Section VI was revised to reflect the change in maximum actual reimbursable expenses to conform to H.B. 1, Sec. 4.1.

On October 7, 1996, the following revisions and additions were adopted by the Credit Union Commission:

Section II D was revised; Section II E 9 was revised; Section IV I was added; Section VI was revised; Section VIII F was revised; and Section XIII D was repealed.

On October 10, 1997, the following revisions and addition were adopted by the Credit Union Commission:

Section II B was revised; a new Section VIII was added; the former Sections VIII through XIV were renumbered; and Appendix B was added.

On January 16, 1998, the following additions and revisions were adopted by the Credit Union Commission:

Section II E was revised to add new Paragraphs 4, 5, and 12, and former Paragraphs 4 through 9 were renumbered.

On January 15, 1999, the following additions and revisions were adopted by the Credit

Union Commission:

Section VI (A) & (D) pertaining to Commission travel were updated to reflect statutory changes enacted by the 75th Legislature.

Section VII pertaining to acceptance of gifts of money was deleted and a new Section VII was adopted for recognition awards.

Section X (S) was deleted and the remaining paragraphs were renumbered. New Section X (S) relating to Commissioner Evaluation was modified to make the evaluation date coincide with the fiscal year-end.

New Section X (V) was modified to delete reference to a Department policy on the orderly hearing of conservation order appeals.

Various formatting, grammatical and spelling errors were corrected.

On January 21, 2000, the following revisions were adopted by the Credit Union Commission:

Section I; Section II C, D, E 2, E 9 & E 11; Section III B, C, D & J; Section IV I; Section VI A, B & D; Section VII B; Section IX B; Section X A, B, F, G, S 1, S 5 & U, and; Section XIII.

On April 21, 2000, the following revision was adopted by the Credit Union Commission:

Section II. E. 11 was changed to delete distribution of minutes to the Attorney General's Office.

On January 19, 2001, the following revision was adopted by the Credit Union Commission:

Section III K was added to establish principles for the promulgation and review of rules.

On November 15, 2002, the following revision was adopted by the Credit Union Commission:

Section II F was added to officially delegate the authority to make decisions regarding motions for oral argument to the Chairman.

On March 21, 2003, the following revision was adopted by the Credit Union Commission:

Section II E (4) was modified to clarify public input for non-agenda items.

On February 17, 2006, the following revisions were adopted by the Credit Union Commission:

Section X. S. (5) was modified to change the completion date of the evaluation process.

Section XII, which dealt with Surety Bonds, was deleted and a new Section XII was added regarding Strategic Goals.

Section XIV was changed to strengthen the expectations related to Ethical Standards.

On February 14, 2007, the following revisions were adopted by the Credit Union Commission:

Section X regarding Commissioner Role is now Section XI and a new Section X was added regarding Commissioner Evaluation Committee.

Section XI regarding Approval of Documents is now Section XII.

Section XII regarding Strategic Goals is now Section XIII.

Section XIII regarding Legal Counsel is now Section XIV.

Section XIV regarding Ethical Standards is now Section XV.

Commissioner Succession Plan was added as Appendix C.

On February 11, 2009, the following revisions were adopted by the Credit Union Commission:

Section VII. D was added to provide for Commission resolutions honoring credit unions for certain milestone dates.

Section IX was modified to revise the structure of Advisory Committees to conform to the Government Code.

On June 19, 2009, the following revision was adopted by the Credit Union Commission:

Section X was modified to add new Standing Committee.

On October 16, 2009, the following revisions were adopted by the Credit Union Commission:

Section II (13) was added to establish Attendance Expectations consistent with statutory changes enacted by the 81st Legislature.

Section XVI was added regarding Use of Technology to reflect statutory changes enacted by the 81st Legislature.

Section XVI was added regarding Negotiated Rulemaking and Alternative Dispute Resolution to reflect statutory changes enacted by the 81st Legislature.

On February 19, 2010, the following revisions/additions were adopted by the Credit Union Commission:

Section II, D was modified to remove references to non-commission committee appointees.

Section II, E, 8, e–m, were modified to adjust the order of business to include consideration of request for excused absences.

Section II, E, 11 was modified to reflect that minutes are on file in the Department's offices.

Section IV, A, 1–2 were modified to reflect SDSI status.

Section VIII was modified to reflect training requirements as required by Sunset Legislation.

Section X, A, 4 was modified to reflect time frame of Commissioner Evaluation.

Section X, B, 1 was modified to clarify the Commission Chair appoints committee members.

Section XI, J was modified to reflect SDSI status.

Section XII was modified to reflect SDSI status.

Section XV, F was modified to add a prohibition against an examiner becoming indebted to a credit union.

Section XVIII was added establishing a Contingency Fund Reserve Policy.

Appendix A, Decision Matrix, was modified to reflect SDSI status.

Appendix B, New Commission Member Training Program was updated to reflect statutory changes.

On February 18, 2011, the following revisions were adopted by the Credit Union Commission:

Section VI, E was modified to reflect SDSI status Section IX, E was modified to reflect SDSI status. Section XII was modified to reflect SDSI status.

On February 17, 2012, the following revisions were adopted by the Credit Union Commission:

Section XVIII regarding Reserve Policy is now Section XIX and a new Section XVIII was added regarding Budget Policy.

On November 2, 2012, the following revisions were adopted by the Credit Union Commission:

Section XIX, B was modified to prescribe the maximum limit for the Contingency Fund Reserve and its six sub-accounts.

Section XIX, D was modified to ensure that excess funds in the Contingency Fund Reserve are used during the next fiscal year to reduce operating fees.

On February 15, 2013, the following revision was adopted by the Credit Union Commission:

Section II, E, 2 was modified to remove language inconsistent with notification requirements of the Open Meetings Act.

On February 21, 2014, the following revisions were adopted by the Credit Union Commission:

Section II B was modified to convert the vice chair from an elected position to a designation made by the Commission Chair;

Section II E 8 & 13 were revised to reflect minor edits and formatting; Section III I was ~~deleteddeleted~~, and the remaining paragraphs renumbered; Section IV F was revised to reflect minor edits and formatting;

Section VI B was modified to reflect the change in guidelines for reimbursement of meals

and lodging from the General Appropriations Act to the locality-based rates approved by the Comptroller's Office;

Section XI A was revised to reflect minor edits and formatting;

Section XV F was modified to integrate the General Counsel position into the specific restrictions that deal with lending transactions and deposit relationships with credit unions;

Section XVI was revised to reflect minor edits and formatting;

Section XVIII G was modified to clarify that full-time equivalent or FTE is not the same as authorized positions and instituting a new cap on employment levels;

Section XVIII H was modified to remove examination fees paid by residential mortgage loan originators employed by a CUSO from revenue;

Section XVIII J was revised to reflect minor edits and formatting; Section XIX C was revised to reflect minor edits and formatting;

Appendix B, New Commission Member Training Program was revised to reflect SDSI status;

Appendix C, Commissioner Succession Plan was modified to switch the required review of the Plan from an annual event to one that is performed periodically;

On March 4, 2016, the following revisions were adopted by the Credit Union Commission:

Section XV I was added to reflect a new requirement related to annual disclosure and prohibition of certain contracts;

Section XVIII D was modified to clarify the date the Commission approves budget assumptions;

Section XVIII M was added to provide authority for obligated funds to be automatically carried over from one fiscal year to the next until the legal obligation is satisfied.

Section XX was added to establish a Second Amendment weapons policy.

On July 8, 2016, the following revision was adopted by the Credit Union Commission:

Section XX was modified to clarify that the Credit Union Department will not impose any restrictions on the carrying of firearms or other weapons beyond that mandated by the Texas Legislature.

On March 10, 2017, the following revision was adopted by the Credit Union Commission:

Section XV was modified to allow an exception to the prohibition on indebtedness to a Credit Union for certain employees if the indebtedness was permissible when incurred and became prohibited as result of employment by the Department or circumstances over which the employee has no control. The revision also expands the criteria for restricting an employee from examining a Credit Union to include past employment, pension interest, and relatives working in the institution.

On March 9, 2018, the following revisions was adopted by the Credit Union Commission:

A new subsection D was added under Section VII, Recognition Awards to provide discretionary authority to the Commission to recognize exemplary achievement.

A new subsection J was added under Section XV, Ethical Standards to address political activity/lobbying by Commission members in their capacity as private citizens.

A new section XVII was added, Information Technology to address the need for the department to create and maintain an internal information security infrastructure.

A new Appendix D was added, Enterprise Risk Appetite Statement

On November 6, 2020, the following revisions were adopted by the Credit Union Commission:

Amendments to Section XX Subsection B sub 1, 2, 4 and 6 to reflect approved increases to the sub-accounts of the Contingency Fund Reserve.

Section VII Subsection D was deleted to remove the requirements to commemorate credit union economic involvement in the state pursuant to Sunset Review recommendations.

On June 4, 2021, the following revisions were adopted by the Credit Union Commission:

Amendments to Section X subsection C to create a standing Audit Committee and

Section VIII and Appendix B relating to the implementation of a training manual for commission members and annual acknowledgement. These changes were required as a result of the passage of SB 707 relating to the Credit Union Department's sunset review.

CREDIT UNION COMMISSION POLICIES MANUAL

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I. INTRODUCTION

It is the purpose of the Commission Policies Manual to provide a codification of Commission policies established directly or indirectly through the recorded actions of the Commission. As new policies are enacted or present policies revised or rescinded by the Commission, such additions or changes will be issued by the Commissioner and, inserted in the Commission Policies Manual in the proper place according to subject. It is essential that in order for such a document as this to be effective and useful, it be kept current. The format and system is organized accordingly.

The manual is structured for use by the Commission as a ready reference to existing policies and to aid in determining areas where policies are lacking or where policies need review and possible revision. It is also designed to provide administrative staff with full knowledge of all Commission policies that have been established.

II. RULES OF THE COMMISSION

A. **Official Name of the Board.** The Commission adopted as the official name: Credit Union Commission.

B. **Vice-Chair.** The Commission Chair shall designate a member of the Commission as vice-chair. The vice-chair serves at the will of the Chair and performs the duties of the presiding officer in the event of an absence or disability.

C. Duties of Officers

Chair. The Chair shall preside at all meetings and perform all other duties prescribed by law or by the Commission.

Vice-Chair. The Vice-Chair shall preside in the absence of the Chair.

Recording Secretary. A Recording Secretary shall be appointed at the beginning of each meeting and shall perform all duties as the Commission may request.

Executive Director. The Commissioner shall perform all duties as required by law and shall be the administrative officer to the Commission.

D. **Committees.** The Commission Chair may appoint ad hoc committees comprised of Commission members or individuals who are not members of the Commission, for evaluating industry methods or problems and presenting

formal recommendations to the Commission.

E. **Board Meetings**

1. **Regular Meetings.** The Texas Finance Code provides that the Commission shall meet twice a year in regular session. Regular meetings shall be held at such designated place, date, and time as may be determined by the Chair. A majority of the members of the Commission shall constitute a quorum.
2. **Special Meetings.** Special meetings may be called by the Chair, the Commissioner or any five members of the Commission at such times, dates, and places as become necessary for the transaction of Department business. Notice of all special meetings shall be posted in compliance with applicable provisions of the Texas Open Meetings Act.
3. **All Board Meetings Open to Public.** Commission meetings, regular and special, shall be open to the general public except as provided by the Texas Open Meetings Act ([Chapter 551 of the Government Code](#)).
4. **Public Input for Non-Agenda Items.** At the beginning of each meeting, the Chair will provide an opportunity for the public to comment on matters regarding rulemaking that are not scheduled items on the agenda. Persons wishing to comment must state their name and who they represent for the record. Unless authorized by a majority vote of the meeting quorum, the comments of those persons will be limited to no more than five (5) minutes.
5. **Public Input for Agenda Items.** For each item on the agenda, the Chair will provide an opportunity for the public to comment. Persons wishing to comment on an agenda item must state their name and who they represent for the record. If multiple persons from an organization or affiliated group are present, one representative should be designated to speak on behalf of that organization or group. Unless authorized by a majority vote of the meeting quorum, the comments of those persons will be limited to no more than ten (10) minutes.

6. **Transaction of Business.** The Commission may transact official business only when in session and shall not be bound in any way by any statement or action on the part of any individual member except when such statement or action is in pursuance of specific instructions of the Commission. No order or decree shall be adopted by the Commission except in open meeting and in accordance with the Texas Open Meetings Act ([Chapter 551 of the Government Code](#)).
7. **Agenda.** The Chair, in cooperation with the Vice-Chair and the Commissioner, shall prepare and submit to each member of the Commission, prior to each meeting, an advance copy of an agenda, outlining matters that should be considered and such other matters, materials, and information as members have requested to be included for consideration.
8. **Order of Business.** The order of business to be observed by the Commission shall be at the discretion of the Chair but generally should be as follows:
 - a. Call to Order/Ascertain Quorum/Invocation
 - b. Appoint Recording Secretary
 - c. Introduction of Visitors and Guests
 - d. Invitation for Public Input
 - e. Receive Requests and Motions for Excused Absences
 - f. Receive Minutes of the Previous Meeting(s)
 - g. Communications
 - h. Reports of Committees
 - i. [Rules - Unfinished Business](#)
 - j. [Rules - New Business](#)
 - k. Executive Session
 - l. Other Business
 - m. Adjournment
9. **Request for Information.** In order to keep all members of the Commission properly informed and to prevent duplication of work, any written report, survey, statistics, or information requested by the Commission or any member thereof should be initiated by action of the Commission and duly recorded in the minutes. Copies of such reports should be made available to all members of the Commission.

10. **Rules of Order.** Meetings of the Commission shall generally be informal, with customary motions and seconding's. Robert's Rules of Order shall apply if so declared by the Chair, or by a majority of members present at any meeting. If Robert's Rules of Order are invoked, a parliamentarian will be designated by the Chair.
11. **Minutes of the Commission Meetings.** Copies of the official minutes of each meeting of the Commission shall be distributed to members of the Commission, key Department personnel, Legislative Reference Library and to private citizens upon making a formal request. An official copy of all minutes shall remain on file in the Department's offices, available to any citizen desiring to examine them. The format of the minutes shall generally follow the agenda and will include pertinent dialogue where feasible.
12. **Recessed Meetings.** A meeting of the Commission and its committees may recess to the next calendar day when it does not complete consideration of a particularly long subject. If two or more days have elapsed since deliberation on the item was suspended, an additional and separate posting requirement can be waived by a majority vote of the meeting quorum when circumstances require a meeting to be held and no practical means exists to post notice prior to reconvening the meeting.
13. **Attendance Expectations.** Members of the Commission are expected to attend all regularly scheduled meetings in person. It is understood, however, that there may be times when members must miss a meeting due to circumstances beyond their control such as illness, bereavement, military obligations, jury duty, or weather conditions. Upon a motion of a member, the Commission may vote to excuse these types of absences on a case-by-case basis. The minutes of each meeting shall reflect whether the absence of a member was excused by the Commission.

Members are expected to provide prior notice to the Commission of any meeting they will miss. Notice of an unexpected absence due to illness or an emergency shall be given as soon as possible. Missing a meeting without notification is unacceptable and such absence will not be subsequently excused by the Commission.

F. Motions for Oral Arguments

As provided in [7 TAC Section 93.603](#), any party who has filed a motion for appeal to the Commission and who has timely requested oral argument may, if approved, argue the case to Commission during the public meeting called to consider the matter. In order to promote administrative efficiency and to expedite decisions on properly filed requests, the Chair is authorized to grant or deny the request. If granted, the Chair will set the time that will be allowed for argument and may determine the issues on which argument will be allowed. The party must complete argument in the time allotted and may continue after the expiration of the allotted time only by a majority vote of the meeting quorum. A party's failure to request oral argument waives the party's right to argue. But even if a party has waived oral argument, the Chair may direct the party to appear and argue.

Oral argument should emphasize and clarify the written arguments in the motion for appeal. The party should assume that all members of the Commission have read the motion before oral argument and the party should be prepared to respond to questions. A party should not refer to or comment on matters not involved in or pertaining to what is in the record.

III. GENERAL POLICIES OF THE COMMISSION

It is the policy of the Commission to:

- A. Welcome suggestions from the public and to so_licit professional and technical advice and the thinking of citizens from all walks of life.
- B. Conduct its deliberations and to arrive at its decisions by acting as a full Commission, and to never delegate the power of decision to any permanent or standing committee.
- C. Function as a policy-forming Commission and seek the advice and counsel or professional leadership from within the Department, through the Commissioner, as well as from outside sources in establishing programs for the benefit and welfare of the people of Texas, and to carry out the intent and spirit of the Legislature.
- D. Provide the Commissioner with the opportunity to be heard and render his advice and recommendations on all matters under consideration by the Commission prior to the final action.

- E. Give direction and support to the Commissioner in carrying out the policies established by the Commission and in the discharge of his general administrative duties and responsibilities.
- F. Deal with the Department, both as a Commission and as individual members, only through the Commissioner or his/her designee.
- G. Consider the design of the service delivery system of the Commission to be a matter of policy.
- H. Support an affirmative action program to ensure equal employment opportunity and nondiscrimination because of race, color, religion, age, sex, national origin, or handicap in the provision of services and in personnel practices and procedures.
- I. Establish a Credit Union Department sick leave pool pursuant to [Chapter 661 of the Government Code, Subsection A](#), to assist employees who suffer a catastrophic injury or illness and have exhausted all accrued leave. The sick leave pool will be under the day- to-day control of the Commissioner who may appoint an employee of the Department to administer its operation.
- J. Continually improve the quality of its rules, by minimizing regulatory burdens on the public and the credit union movement, and generally by ensuring that its rules achieve legislative goals effectively and efficiently. The Commission will be guided by the following principles in its promulgation and review of rules.
 - 1. Burdens imposed on the credit union movement and the public should be minimized. Before issuing a rule the Commission will give careful consideration to the need for such an issuance. Frequently, a rule is required by statute. Alternatively, the Commission may identify a need for a supervisory tool to implement its statutory obligations, or to clarify its position for the benefit of the credit union movement or the public. Once the need for a rule is determined, the Commission will seek to minimize to the extent practicable the burdens which such issuance imposes on the credit union movement and the public. New reporting and recordkeeping requirements imposed by a rule will be carefully analyzed. The effect of the rule on competition within the movement and the financial services industry will be considered. Particular attention will be focused on the impact that a rule will have on small credit unions and whether there are alternatives to accomplish the Commission's goal which would minimize any burden on small credit unions. Prior to issuance, the potential benefits associated with the rule will be weighed against the potential costs.

2. Rules should be clearly and understandably written. The Commission will seek to make its rules as clear and as understandable as possible for those persons who are affected by them. In developing or reviewing existing rules, the Commission will consider the rule's structure as well as the specific language used; both are important components to achieving a clear and useful rule.
3. The public should have a meaningful opportunity to participate in the rulemaking process. The Commission will seek to improve its rules during the development phase. Whether a new rule is being promulgated or an existing one revised, the Commission will give careful consideration to the implications of its actions as public policy. Public participation in the rulemaking process is an opportunity for the Commission to hear directly from affected members of the public with important experience and thoughtful insights related to the pertinent issues. A person or credit union may petition the Commission for the issuance, amendment, or repeal of any rule by submitting a written petition to the commissioner. The petition should include a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.
4. All rulemaking will be carried out in accordance with the Administrative Procedures Act, by which the Commission will provide the public with notices of proposed rulemaking and opportunities to submit comments on the proposals. All comments and proposed alternatives received during the comment period will be considered prior to the issuance of a final rule. The Commission takes final action on proposed rules as promptly as circumstances allow. If a significant period of time elapses following publication of a proposed rule without final action, the Commission will consider withdrawing the proposal or republishing it for comment. If the Commission decides to reconsider a proposed rule that has been withdrawn, it will begin the rulemaking process anew.
5. Rules should be reviewed periodically. To ensure that the Commission's rules are current, effective, and efficient and continue to meet the principles set forth in this statement of policy, the Commission will periodically undertake a review of each rule. The Commissioner will, consistent with applicable laws, establish a schedule and procedures for the reviews. Factors to be considered in determining whether a rule should be revised or eliminated include: the continued need for the rule; opportunities to simplify or clarify the rule; the need to eliminate duplicative and inconsistent rules; and the extent to which technology, economic conditions, and other factors have changed in the area affected

by the rule. The result of this review will be a specific decision for each rule to be either revised, rescinded, or retained in its then-current form.

IV. RESPONSIBILITIES OF THE COMMISSION

- A. The Commission shall be responsible to the public for the overall conduct of the Department with specific reference to:
 - 1. Responsibility for the management and administration of the Department's funds, subject to any restrictions or requirements imposed by the Government Code.
 - 2. Responsibility for interpreting the financial needs of the Department and adopting a fiscally-prudent budget that ensures the Department fulfills its supervisory mission.
- B. The Commission should, to the extent possible, make certain that an effective and client-concerned program is carried out for citizens.
- C. The Commission or any of its individual members shall not take any direct responsibility for administering the Department.
- D. The Commission should exercise its responsibility of interpreting the Department to the public, explaining its programs and policies and defining its actions.
- E. The Commission should exercise its responsibility of representing and interpreting the public to the Department staff, explaining public reactions to Department programs and administration.
- F. The Commission members should become familiar with the State constitutional provisions, statutes and rules directly affecting the Department and seek the advice and recommendations of staff, the Attorney General or any other legal counsel retained by the Department.
- G. The Commission should assume responsibility for leadership in securing appropriate legislation to further existing programs or to provide for new and additional programs for the benefit of Texas citizens.

H. The individual Commission member should:

1. Have a good understanding of the purpose of the Department and conviction as to the importance of the program.
2. Have capacity to view the Department objectively in relation to changing needs and to be receptive to changes necessary to meet such needs.
3. Understand the Department's policy on the difference in function between Commission and staff and work in genuine accord with this policy.
4. Keep informed of developments in the field appropriate to the work of the Department.
5. Serve actively on the Commission, attend all Commission and committee meetings unless valid reasons prevent it, and promptly carry out all assignments.
6. Become acquainted with the various operations and their staffs to ensure a broad knowledge of the Department.
7. Make constructive suggestions and criticisms regarding the Department through the appropriate channels.

- I. The Commission shall be responsible for reviewing grievances of employees who are not satisfied with the decision of the Commissioner on a grievance alleging discrimination, sexual harassment or the Commissioner's non-compliance with applicable laws or rules. The grievant must submit such grievances to the Chair of the Commission within ten working days after receipt of the Commissioner's response. If the facts of the grievance support the Commissioner's response, the Chair or his designee shall affirm the Commissioner's resolution. Otherwise, the Chair or his designee shall initiate an investigation, reach a final decision, and furnish a copy of the findings and final decision to the Commissioner and the grievant within 10 working days following receipt of the grievance by the Chair. The 10 working days may be extended by the Chair with the concurrence of the grievant.

The review and response to the employee grievance are confidential and will be treated as such. Any discussion regarding the grievance should be restricted to those individuals who are responsible for responding to the complaint and those having knowledge pertinent to the investigation, resolution and/or response.

V. **ESTABLISHING NEW POLICIES AND AMENDING OR RESCINDING EXISTING POLICIES**

- A. **Establishing New Policies.** All actions of the Commission which establish policy should be incorporated into a statement of policy enacted by resolution at a Commission meeting.
- B. **Amending Existing Policy.** Existing policies may be amended at any Commission meeting by a majority vote. These policies should be reviewed at least once each year. Amended policies shall show the date of amendment and the effective date if not immediate.
- C. **Rescinding Existing Policy.** An existing policy should be rescinded by appropriate resolution enacted by the Commission as of the date of such action or at an established future date, but the effective date cannot be made retroactive.

VI. **TRAVEL OF COMMISSION MEMBERS**

- A. **Compensation.** [Section 15.207, Texas Finance Code](#), provides that: “(a) A commission member may not receive compensation or a benefit because of the member’s service on the commission except as provided by Subsection (b). (b) For each day that a commission member engages in the business of the commission, the member is entitled to:
 - (1) per diem, including compensatory per diem;
 - (2) actual expenses for meals and lodging; and
 - (3) transportation expenses.”
- B. **Meals and lodging.** Members shall be reimbursed for actual expenses for meals and lodging. Generally, the amount reimbursed should not exceed the locality-based maximum rates approved by the Office of the Comptroller of Public Accounts. In accordance with IRS requirements, a member that receives reimbursement for meals in conjunction with non-overnight trips will be issued an IRS Form 1099 for the calendar year in which the reimbursement was paid.
- C. **Transportation.** Members shall be reimbursed for transportation in conformity with allowances specified by the Comptroller of Public Accounts, except that the mileage allowance for use of a privately- owned vehicle is limited to the rate authorized for Department staff.
- D. **Additional Travel.** Any additional travel at State expense by individual Commission members pertaining to Department programs, other than attendance at legislative hearings or meetings with legislators, shall require prior approval

by the Commission or if circumstances warrant, the Chair may grant approval subject to final approval of the Commission. Commission members may attend certain state and national credit union conferences in furtherance of their knowledge and skills related to their responsibilities as a Commission member, subject to approval by the Commission.

- E. **Public Members.** The disadvantage that public members may have by not having a sponsor organization to fund attendance at training conferences is recognized and shall be considered in formulating budget requests and in scheduling public members for conferences.

VII. RECOGNITION AWARDS

- A. Upon taking office as members of the Commission, all members will receive a Commission pin that identifies them to the public as an official overseeing the regulation and supervision of the state credit union system.
- B. Upon the resignation of or completion of a term of office for a member, the Commission will adopt a resolution of appreciation to recognize the service of that member. A copy of the framed resolution will be sent to the former member as a token of the Commission appreciation. The total cost associated with preparing and delivering this token shall not exceed the limitations contained within the General Appropriations Act for such an award.
- C. When the mission of an advisory committee has been accomplished or upon the resignation of one of its members, the Commission may adopt a resolution of appreciation, as prescribed in paragraph B above, to recognize the service of an individual(s) on the committee who is not Commission member.
- D. The Commission, in the exercise of its discretion, may also recognize a or service to credit unions or the Department that is exemplary. Recognition for such accomplishment is reserved for the outstanding and is not meant to become routine and a recognition of the commonplace.

VIII. NEW COMMISSION MEMBER TRAINING

The Texas Finance Code requires members newly appointed to the Commission to complete a training program before voting, deliberating, or being counted as a member in attendance at a meeting of the Commission. The training program provides the Commission member with information regarding the functions and operations of the Department, requirements of certain provisions of the Texas Government Code, conflicts of interest and ethical considerations, and the basic principles of credit union

management.

The training program is divided into three required sections. The training program will be encapsulated into formal training manual and each Commission member must sign an annual statement acknowledging their receipt and review of the training manual. The name, purpose and outline of each section are presented in Appendix B.

IX. ADVISORY COMMITTEES

The following policy governs the appointment and use of advisory committees.

- A. The Commission may appoint an advisory committee to provide the Commission, the Commissioner, or the staff with advice and counsel not available from Department sources on matters of Department responsibility.
- B. The appointment and use of advisory committees shall comply with all applicable statutes, including the Credit Union Act and the Government Code. Prior to appointing any advisory committee, the Commission must adopt rules governing the purpose, mission, structure and use of the advisory committee it creates.
- C. The Commission shall determine the number of individual members that will constitute the advisory committee. The number of members may not exceed 24. In appointing members to the committee, the Commission must provide a balanced representation between the industry and credit union members.
- D. The committee shall meet as prescribed by Commission rule and shall select a presiding officer from its members. All meetings shall be posted and conducted in compliance with the Open Meetings Act. The presiding officer shall report to the Commission.
- E. The Department may reimburse committee members for travel expenses if, and to the extent, permitted by applicable statutes and the availability of funds in the Department's budget.
- F. The Department shall provide the Commission an annual evaluation of the committee's work, the committee's usefulness, and the costs associated with the committee, including the cost of staff time spent in support of the committee's activities.
- G. The committee shall serve until abolished as set out in Commission rule.

X. STANDING COMMITTEES

A. Commissioner Evaluation Committee

1. **Members.** The Commission Chair shall appoint a Commissioner Evaluation Committee of at least three members and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.
2. **Purpose.** The purpose of the Committee shall be to coordinate the annual evaluation of the Commissioner's performance and to oversee the development and maintenance of a Commissioner succession plan.
3. **Responsibilities and Duties.** In furtherance of the Committee's purpose, and in addition to any other responsibilities that may be assigned to it from time to time by the Commission, the Committee shall have the following responsibilities and duties:
 - a. Develop and review periodically the evaluation form to be used for the Commissioner's evaluation.
 - b. Establish the policies and procedures that will be used to carry out the Commissioner's performance review.
 - c. Prepare the Commissioner's evaluation for the Commission's review, comment, and revision, with the intent to accomplish the following:
 - i. Clarify the Commissioner's leadership and management role as viewed by the Commission.

- ii. Maintain a harmonious working relationship between the Commission and the Commissioner.
 - iii. Assure the Commission that the Department is being effectively administered by the Commissioner.
 - d. Make recommendations to the Commission with respect to the establishment of performance standards for the coming fiscal year.
 - e. Make recommendations to the Commission on the Commissioner's remuneration.
 - f. Oversee the Department's succession plan for the Commissioner's position, including policies and procedures for new Commissioner selection, as well as policies regarding succession in the event of an emergency.
4. **Evaluation.** The evaluation process will be completed at the last regularly scheduled Commission meeting of the calendar year.

B. Rules Committee

1. **Members.** The Commission Chair shall appoint a Rules Committee of at least three members and shall designate one member as Chair. The Commission Chair will serve as an ex- officio member of this committee.
2. **Purpose.** The purpose of the Committee is to conduct thorough deliberations and scrutiny of proposed rulemaking and assigned projects, and to bring to the Commission the results of its deliberations and its recommendation for Commission action.
3. **Responsibilities and Duties.** In furtherance of the Committee's purpose, and in addition to any other responsibilities that may be assigned to it from time to time by the Commission, the Committee shall have the following responsibilities and duties:
 - a. Develop and review the administrative rules in accordance with the Administrative Procedures Act and the Government Code.
 - b. Create a forum to discuss rulemaking matters at a more detailed level than could be accomplished at regular Commission meetings make recommendations to the Commission with respect to the adoption, amendment, or repeal of administrative rules.

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4. **Meetings.** All Committee meetings will be open to the public and should be publicized to encourage participation by credit unions and credit union members. Meetings will generally be held the day before each regularly scheduled meeting of the Commission.

C. **Audit Meetings**

1. **Members.** The Commission Chair shall appoint an Audit Committee of at least three members and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.

2. **Purpose.** The purpose of the Committee is to implement and oversee and independent audit program of the Department's financial reporting process.

3. **Responsibilities and Duties.**— In furtherance of the Committee's purpose, and in addition to any other responsibilities that may be assigned to it from time to time by the Commission, the Committee shall have the following responsibilities and duties:

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- a. Recommend to the Commission for approval of the development implementation and performance monitoring of an independent audit plan.

- b. Recommend to the Commission for approval and oversight of appropriately qualified vendors to audit the Department.

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- c. Encourage and facilitate cooperation between auditors hired by the Commission and auditors assigned by other state agencies to audit the Department.

- d. Recommend to the Commission for approval a solicitation document, a vendor, or a contract, for auditing services only if the solicitation document, vendor's proposal, or the proposed contract, as applicable, includes a clause that requires the selected vendor to cooperate with an

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auditor assigned by a state agency to audit the Department, and only if it includes any other clauses required by the Commission.

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4. **Meetings.** All Committee meetings will be open to the public and should be publicized to encourage participation by credit unions and credit union members. Meetings will generally be held the day before each regularly scheduled meeting of the Commission.

XI. THE ROLE OF THE COMMISSIONER IN RELATION TO THE COMMISSION AND PUBLIC

- A. The Commissioner is accountable to the Commission for the overall operation of the Department. The Commissioner acts as liaison between the Commission and the staff.
- B. The Commissioner shall take the initiative in interpreting programs to the Commission, in suggesting new ideas or plans, and in presenting matters for Commission consideration.
- C. The Commissioner, in cooperation with the Chair and Vice-Chair, shall be responsible for preparing an agenda for Commission meetings and for preparing reports for the meetings.
- D. The Commissioner shall act as official representative of the Department with the public, and as such shall have authority to designate other staff members to act in this capacity in accordance with his judgment.
- E. The Commissioner has responsibility to ensure compliance with all Commission policies and State and Federal laws and regulations concerning the Department.
- F. The Commissioner shall notify the Commission of any instance in which his or her authorized actions are, or may be, at variance with Federal or State statutes or rules.
- G. The Commissioner has responsibility to exercise control over all divisions of the Department, and to appoint, supervise, and remove staff and subordinate employees of the Department as the interest of the agency may demand. The expectation of the Commission is that the Commissioner will be fair and when the interest of the agency dictates that the Commissioner take an adverse personnel action, (s)he should consider all known factors relating to the matter. Appointment of a Deputy Commissioner may be made by the Commissioner subject to approval by the Commission.

- H. The Commissioner shall make such recommendations to the Commission concerning the affairs of the Department as may be desirable.
- I. The Commissioner shall keep the Commission informed of the financial condition and future needs of the Department.
- J. The Commissioner shall be responsible for preparing the budget requirements for the Commission and be responsible for budgetary administration of all funds received by the Department.
- K. The Commissioner shall prepare and submit to the Commission such reports as may be required or desired by the governing body and keep the Commission continuously informed of the functions of the Department.
- L. The Commissioner shall prepare program and financial reports which will provide the Commission with the information required to fulfill its responsibilities. Such reports shall be updated for presentation at least semiannually. In these reports the Commissioner shall point out any significant trends that may be indicated and shall be especially alert to inform the Commission of any potential problems.
- M. The Commissioner shall keep the public informed through reports to the Commission regarding the operations of the various programs and through a monthly newsletter.
- N. The Commissioner shall prepare and submit the plans for services to be provided by Commission programs, other than those of a visual nature, in accordance with Federal requirements and regulations, subject to the approval of the Commission.
- O. The Commissioner shall have authority to execute all third-party contracts and interagency contracts for services on behalf of the Department.
- P. The Commissioner shall be responsible for the development of administrative manuals to provide uniform rules, regulations and operating procedures in accordance with State laws, and with Federal regulations and laws applicable to Commission programs.
- Q. The Commissioner shall be responsible for developing programs for staff development and training of personnel of the Department.
- R. The Commissioner shall be responsible for developing and maintaining an adequate and technically qualified program evaluation process that will be able to determine the validity and effectiveness of the programs of the Department.

- S. The Commissioner shall notify the Commission members of the issuance of a conservation order.
- T. In cases where either a member of the Department's staff or the insuring organization itself is not appointed as conservator, the Commissioner will select conservators in accordance with established guidelines and shall execute a standard engagement contract approved by counsel containing the terms of the conservatorship appointment. The Commissioner shall provide details related to conservatorship activities as follows:
1. Conservatorship orders issued during the past quarter,
 2. Deviations from the standard contract, if any, and
 3. A summary of the cost of each conservator by credit union.
- U. Commissioner shall immediately notify the Commission members of any request for a hearing to appeal a conservation order.

XII. AUTHORITY TO APPROVE DOCUMENTS INVOLVING BUDGETED FUNDS

The Commissioner is authorized to delegate to any officers or employees of the Department authority to place their signatures on any account pertaining to funds of the Department.

XIII. STRATEGIC GOALS

Four strategic goals guide the operations of the Department and directly support the vision of the Commission:

- To ensure a safe and sound credit union industry.
- To provide a flexible regulatory framework that enables credit unions to provide a full competitive array of financial services.
- To safeguard the interest of credit union members.
- To develop a professional and motivated staff that provides quality service to the citizens of Texas and supports achievement of Department's statutory mission.

XIV. LEGAL COUNSEL

The General Counsel is the attorney for the Department. This includes the

Commission, the Commissioner, and other Department officers and employees. The Commissioner, the Commissioner, and other Department staff officers and employees, and Commission members shall consult with the Attorney General's Office Department's General Counsel as needed on matters germane to their duties and responsibilities.

When representation is warranted from the Attorney General's Office, the Department shall submit request for representation to the Attorney General's Office.

Outside legal counsel other than the Attorney General shall be retained only upon approval of the Commission and Attorney General.

XV. ETHICAL STANDARDS

It is of the highest importance that the people of the State of Texas have complete confidence in the integrity of their public servants. This need is especially critical in the area of financial services regulation. The responsibility for supervising and regulating the credit unions of the State carries with it the duty to adhere to the highest ethical standards and principles. It is for this reason that these standards are adopted by the Credit Union Commission.

- A. Principles.** Maintaining the trust and confidence of all those with whom the Department comes into contact is critical to the Department's success. That trust and confidence depends on the Department's reputation for acting ethically, with integrity and to the highest professional standards. Therefore, the Department, its staff, and Commission Members shall strive at all times to avoid acting in such a way as would, accidentally or otherwise, bring the Department into disrepute.
- B. Code of Conduct.** The Department does not proscribe limits to or interfere in the way staff or Commission Members choose to enjoy their personal or private time. However, staff and Commission Members must be aware that, in the eyes of the public, any Department-related activity in which they are involved cannot be wholly divorced from their association with the Department, and therefore may reflect on the Department or be attributed to it. In any situation which they are or may appear to others to be acting on behalf of the Department, staff and Commission Members shall take care to ensure not only that personal motivations and interest do not conflict with those of the Department, but also that they do not appear to do so to the perception of an outside observer. Staff and Commission Members shall therefore uphold the Commission's Ethical Standards in all situations where they might reasonably be regarded as

representing the Department. Specifically, Department staff and Commission Members must avoid action, whether or not specifically prohibited by statute, which might result in or create the appearance that they are:

- Using public office for private gain;
- Giving preferential treatment to a person or group;
- Losing the ability to make independent and impartial decisions or recommendations; and
- Conducting themselves in a manner that would adversely affect the public's confidence in the integrity of the Department.

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C. Code of Ethics. In all actions, activities and relationships the Department, its staff, and Commission Members will act with the highest standards of integrity and objectivity. Specifically, they must:

- Act with honesty and integrity, and never knowingly mislead any person.
- Be impartial, ensuring that they declare and make known personal interests and do not give or receive any inducement which could, or could be seen to, be corrupt or conflict with the interest of the Department.
- Comply with applicable laws, rules and regulations.
- Maintain the confidentiality of information entrusted to them by the Department or credit unions except when authorized or otherwise legally obligated to disclose.
- Deal fairly with credit unions, credit union members, and staff.
- Provide information that is accurate, objective, relevant, timely, and understandable.
- Protect and ensure the proper use of State resources and assets.
- Promptly report any illegal or unethical conduct to management or other appropriate authorities.

D. Conflict of Interest. As representatives of the Department, staff and Commission Members are obligated to place the interest of the Department, in any transaction involving the Department, ahead of any personal interest or personal gain and to disclose all facts in any situation where potential conflict of interest may arise. Involvement in any activity or occupation in which an individual may have a "private or personal" interest with an entity under the Department's jurisdiction could be interpreted by the public as a potential conflict of interest, and thereby a breach of ethical standards. Any such involvement must be properly disclosed by the individual who will then recuse him or herself from any dealings with the entity.

E. Equal Opportunity. The Department shall be committed to providing a work

environment that values diversity and provides opportunities regardless of race, color, religion, gender, national origin, sexual orientation, marital status, age, or disability. This commitment applies to both applicants and staff in all phases of employment including recruiting, hiring, placement, training, development, transfer, promotion, demotion, performance reviews, compensation, benefits, and separation from employment.

- F. Specific Restrictions.** Lending transactions and deposit relationships with credit unions by individuals having regulatory authority over those institutions could be interpreted by the public as a conflict of interest. Such unfavorable perceptions could diminish public confidence in credit unions or the regulatory agency. Therefore, neither the Commissioner, the Deputy Commissioner, nor the General Counsel may be a member of, or be directly or indirectly indebted to, any credit union under the Department's jurisdiction, or any affiliate of such credit union (hereafter referred to collectively as "Credit Union"). In addition, examiners may not become directly or indirectly indebted to a Credit Union supervised or regulated by the Department. Other individual employed by the Department may become a member of or be indebted to a Credit Union as long as the employee meets the financial requirements to obtain such credit or loan, the terms of the arrangement are no more favorable than those available to the general membership, and the relationship is fully and properly disclosed to the Department before funding. With the exception of the Commissioner, the prohibition on indebtedness to a Credit Union does not apply to an employee if the indebtedness was permissible under this policy when incurred and became prohibited as a result of employment by the Department or circumstance over which the employee had no control, including a merger, conversion, or purchase or sale of assets involving a Credit Union. An employee is restricted from examining a Credit Union and may not knowingly participate in or consider any matter concerning a Credit Union if the employee has or has had a borrowing relationship, past employment, pension interest and relatives working in a Credit Union. An indebtedness that was permissible when incurred and that becomes prohibited as result of employment by the Department or circumstances over which the employee has no control, may be continued as long as no additional funds are advanced, and the indebtedness is not modified on terms more favorable than those extended to other credit union members.
- G. Outside Activities.** It is recognized that the Commissioner and other staff may be asked to serve on the boards, councils or other governing or advisory bodies of various business, civic, professional, and social organizations in non-compensated positions. Such service is generally deemed to be in the best interest of the Department because it broadens the experience of the

individuals involved and exposes the Department to a larger audience of business, civic, professional, and social leaders. Such involvement, however, must be properly disclosed by the individual.

- H. Department Policies.** The Commissioner may, as deemed necessary or appropriate, adopt more specific policies to refine or implement these standards.

I. Annual Disclosures and Prohibition of Certain Contracts.

(a) The Commission is committed to ensuring that the Department's procurement, contracting and contract management are conducted in accordance with the principles of openness, trust, and in full compliance with the provisions of Texas Government Code § 2261.252.

(a)

(b) For purposes of this section, a Commission member or staff member under this section has a financial interest if they:

(1) own or control, directly or indirectly, an ownership interest of at least one percent in an entity, including the right to share in profits, proceeds, or capital gains; or

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(2) could reasonably foresee that a contract with the entity could result in a financial benefit to the Commission member or staff members under this section.

(c) In pursuit of this important goal, the Commission requires annual disclosure by each Commission member and staff member who is involved in procurement or contract management for the agency of any potential conflicts of interest specified by state law or that is known by the member or staff with respect to any contract with a private vendor by the agency or bid for the purchase of goods or services from a private vendor by the agency.

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(d) Commission members and covered staff members under this section are required to complete an annual disclosure form even if they do not have a financial interest to report. In such a situation, the Commission member or staff member shall file annual disclosure statement, stating "none". Each fiscal year, an annual disclosure statement under this section must be submitted to the Department's Staff Services Officers by September 30. Any changes in financial interest must be reported promptly by completing a new disclosure form not later than the 30th day after the date of the change or the member becomes aware of the change, whichever event occurs later.

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(c) The agency may not enter into a contract for the purchase of goods or services with a private vender with whom any of the following agency employees or officials have a financial interest:

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(e)

(1) a member of the Commission;

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(f)

(2) the Commissioner, the Deputy Commissioner, the general counsel, or any employee engaging in purchasing for the agency; or

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(g)

(3) a family member related to an employee or official described by Subdivision (1) or (2) with the second degree by affinity or consanguinity.

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J. Political Activity/Lobbying. A Commission Member is free to engage in political activities/lobbying, which includes communication intended to influence legislation or the outcome of an election, when such political activity/lobbying is carried out in one's capacity as private citizens and when, in the Commission Member's judgment, such activity will not conflict with the Commission Member's ability to carry out Commission responsibilities. A Commission Member should consider, when making such decisions, outside perception and the potential difficulty in distinguishing between the Commission Member's personal and professional capacities. The law and this policy prohibit the use of Department resources (this includes materials, staff time, and travel expenses) for political activities/lobbying, and a Commission Member must make clear when engaging in political activities/lobbying that such activity is carried out in the Commission Member's individual capacity. A Commission Member must not use the Commission Member's affiliation with the Commission/Department in connection with political activity/lobbying.

XVI. USE OF TECHNOLOGY

The Commission recognizes that technology is an indispensable tool enabling government to operate efficiently and provide services. Recognizing that the development of technology resources must be conducted in a secure, deliberate, and cost-effective manner, the Commission is committed to using technology to support Department priorities and program delivery, to increase productivity, and to enhance services to the public.

To implement this commitment for greater use of technology, the Department will

research and propose appropriate and affordable technological solutions for improving the Department's ability to accomplish its statutory mission. All technological solutions, at a minimum, shall:

1. ensure that the public can easily find information about the Department on the Internet;
2. ensure that credit unions and their members who need to use a Department service or function are able to:
 - a. interact with the Department through the Internet;
 - b. access any service or function that can be provided effectively through the Internet;
 - c. be respectful of individual privacy;
 - d. be secure from unauthorized access; and
 - e. be developed through the Department's planning processes and within budget.

XVII. INFORMATION TECHNOLOGY SECURITY*

Information, in all forms, created, collected, or distributed by the Department is a valuable asset and must be protected from unauthorized disclosure, modification, or destruction. The Department must employ prudent information security policies, standards, and practices to minimize the risk to the integrity, confidentiality, and availability of information. The Department shall create and maintain an internal information security technology infrastructure to protect the confidentiality, availability, and integrity of information assets.

XVIII. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION

The Commission is committed to the use of alternative dispute resolution (ADR) and negotiated rulemaking (NRM) as management tools to resolve disputes at an early stage, in an expeditious, cost effective, and mutually acceptable manner. The Commission adopts this policy to express its support for the appropriate use of ADR and NRM. The procedures used by the Department shall conform to the applicable model guidelines set out by the State Office of Administrative Hearings and shall comply with the requirements of [Chapters 2008](#) and [2009 of the Government Code](#).

This policy is intended to apply to the resolution of disputes in contract administration, disputes in litigation (except as noted below), and internal disputes, such as those between employees and management. It is not intended to apply to examinations and investigations. In addition, the need to ensure that law

enforcement function is not compromised, the need to ensure uniform treatment, and the need for judicial resolution or precedent, make ADR generally unsuitable for challenging enforcement of state laws and rules. This policy is also not intended to apply to situations where the Department seeks a temporary restraining order. Taking into account these factors, as well as budgetary constraints, the Department will consider the use of a consensus building process, using a neutral facilitator and a balanced negotiating committee composed of representatives of all interests that the situation will affect.

The Commission believes that NRM will be most appropriate when the new or existing rule that the Department is developing or amending would have a major effect on the industry or the public and is not mandated by statute or federal regulation. In situations where the formality of NRM is not necessary, the Department will consider using interest-based negotiation or policy dialogue to solicit stakeholders' views of and suggestions for proposed new or amended rules, as well as any other issues that affect the industry or public.

The Department's ADR and NRM proceedings will rely on a neutral third party from the State Office of Administrative Hearings to facilitate resolution of the situation. The Commission believes that ADR and NRM are most successful where a neutral or impartial third party, with no vested interest in the outcome of a situation, allows the parties themselves to attempt to resolve the situation. Neutrality will maintain the integrity and effectiveness of the ADR and NRM program. In furtherance of its commitment to ADR and negotiated rulemaking, the Commission designates the Assistant Commissioner to coordinate the implementation of the policy, to serve as the resource for any necessary training, and to collect data concerning the effectiveness of the procedures.

The choice of when and how to use ADR and NRM is within the discretion of the commissioner, subject to the agreement of the parties, and does not create any right to judicial review of the commissioner's decision. In addition, the policy does not obligate the Department to offer funds to settle any case, or to accept a particular settlement or resolution of a dispute.

XIX. BUDGET POLICY

The financial integrity of the Department is of vital importance. Written financial policies assist the Commission and staff in the financial management of the Department, save time and energy when discussing financial matters, engender public confidence, and provide continuity over time as Commission and staff changes occur.

- A. Goal.** The goal of the Commission's budget process is to achieve a balanced budget while maximizing resources and allocating those resources to align with the Department's statutory mission. To achieve this goal, the commissioner has the responsibility to submit an annual operating budget to the Commission each fiscal year. This policy outlines the general guidelines for budgeting and the budget process at the Department. The Department budget expresses, in terms of dollars, the funded programs and plans of the Department for the fiscal year and the estimated revenues necessary to finance these programs and plans.
- B. Strategic Plan.** The Department's strategic plan provides the framework for the annual budget process. The commissioner is responsible for identifying resources needed to achieve the goals in the Commission approved strategic plan.
- C. Balanced Budget.** The Commission is required annually to approve a budget for the Department. Typically, budgeted expenditures should not exceed budget revenues in any given year. All or a portion of the reserve fund balance, however, may be used for such things as non-recurring expenditures or to replace temporary declines in revenues at the discretion of the Commission.

- D. Commission Guidelines.** Each budget year will have unique assumptions depending on circumstances and Commission priorities. A schedule of these budget assumptions will be prepared each budget cycle and approved by the Commission at its first meeting of the calendar year. It is the responsibility of the commissioner to ensure that all budget assumptions for a given fiscal year are incorporated into the budget and are carried out operationally.
- E. Budget Adoption.** The budget shall be adopted not later than August 31 of each year; but, in the event the budget is not adopted, the budget for personnel and essential operating supplies made in the previous fiscal year shall be extended until the new budget is adopted.
- F. Budget Controls.** The Department shall develop appropriate controls and procedures and insure that established control limits are not exceeded. Summary management reports should be prepared quarterly for the Commission to evaluate the current financial status of the agency.
- G. Limitation on Department Employment Levels.** On an annual basis, the Commission will establish the number of full-time equivalent (FTE) positions for the Department. The commissioner utilizing his/her discretion may retain staff to a level of 110 percent of the authorized FTEs, as long as the increase does not result in staffing cost exceeding authorized budgeted levels on an annualized basis. This limitation, however, does not restrict the statutory authority of the commissioner to negotiate, contract, or enter into an agreement for professional or personal services to carry out the powers, duties, and responsibilities of the Department.
- H. Revenue.** Generally, projected revenues available to balance a fiscal year budget will be determined solely from the operating fees generated from [7 TAC Section 97.113](#). One-time revenue sources may be used for one-time expenditures, such as capital items or short-term contractual obligations of durations of less than twelve months.
- I. Revenue Estimates.** The Department will submit revenue estimates annually to the Commission. Revenues should be estimated using a conservative approach to avoid any budget shortfalls during the fiscal year.
- J. Fees.** The Department is self-supporting; therefore, fees must be established at a level ensuring, at a minimum, the recovery of the full cost of operating the Department. The Department will review all fees, at least biannually, and recommend changes based on factors such as the impact of inflation, indirect cost adjustments, and any other related expenses that impact the cost of providing services to credit unions and the citizens of Texas.

- K. Collections.** The Department will monitor revenue collection throughout the fiscal year. When revenue is less than estimated, the commissioner shall initiate action consistent with prudent financial management and notify the Commission of such action.
- L. Replacement/Capital Improvement Plan.** Annually, an updated three- year Replacement/Capital Improvement Plan (RCIP) will be developed and submitted to the Commission for approval. The RCIP must include:
1. A list of proposed maintenance projects or capital improvements with cost estimates and the recommended time schedules for each item.
 2. Capital projects presented in the RCIP will show related new operating and maintenance costs.
- M. Obligated Funds.** Funds that are legally obligated pursuant to a legally binding agreement in one fiscal year prior to the end of that fiscal year are considered obligated funds. Obligated funds include commitments for goods, services, consumables, capital assets, mixed assets, construction, and repair or remodeling, even though the actual receipt or completion of, or payment for, the obligated item may not initially occur or finally occur until after the end of the fiscal year in which the funds were obligated. The budget authority for obligated funds will automatically be carried over from the fiscal year in which the obligation is made to each fiscal year until the legal obligation is satisfied, and the subsequent fiscal year budget is increased by an amount exactly equal to the obligated amount. Obligated funds may only be used for the purposes of the obligation. If the expenditures remitted for the completed obligation are less than the budgeted amount, including any amounts carried over, the remaining obligated funds may not be recommitted or reused without the expressed permission of the Commission.
- N. Unexpended Funds/Excess Revenue.** Unobligated and unexpended funds in the budget and any revenue collected in excess of budgeted expenditures will be retained in the interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company for future use as determined by the Commission.
- O. Limitation on Use of Funds.** The Department may only expend funds for items set out in the expenditure classifications of the Comptroller's Manual of Accounts.

- P. **Reimbursements.** Any reimbursement or refund of expenditures received by the Department for an authorized program or service will be credited back to the budget items or accounts from which the expenditures were originally made.
- Q. **Position Classification Plan.** Expenditures for the salaries of staff will be governed by [Chapter 654, Government Code](#), [Chapter 659, Government Code](#) and [Article IX, Section 2.01](#) of the Appropriations Act for the current biennium.
- R. **Salary Limits.** Staff will be paid salaries at rates within the applicable salary schedules provided in Article IX of the Appropriations Act for the current biennium.
- S. **Scheduled Exempt Position.** The Commission shall set the salary of the commissioner. The rate of compensation provided for the commissioner shall be guided by Chapter 654, Government Code, Chapter 659, Government Code and the Scheduled Exempt Position Salary Rates established in Article IX, Section 3 of the Appropriations Act for the current biennium.
- T. **Travel Expenses.** All requests for payment or reimbursement of travel related expenses will comply with [Chapter 660, Government Code](#), Article IX of the Appropriations Act for the current biennium, and the Comptroller's Rules.
- U. **Reimbursement Rate.** Commission Members and staff traveling on official state business will be reimbursed at rates that will not exceed the rates announced by the Comptroller for other State employees.
- V. **Bv Retired Employees.** The Department's annual budget shall provide sufficient funding to pay the Department's share of retired employee health care cost.
- W. **Supervisions and Conservatorships.** Any funds received by the Department pursuant to supervision or conservatorship proceedings, as authorized by [Section 126.001, Finance Code](#), are approved to pay/reimburse costs related to such proceedings, including the salary and per diem of the appointed supervisor or conservator.
- X. **Gifts or Grants.** Any gifts or grants approved by the Commission will be separate authority to expend funds for the purpose indicated and will be accounted for separately from the budget.

Y. Performance Measures. The Department's annual budget and operating plan should also include performance measures for each major goal of the agency. Performance measures are predicated on the expected outcomes of services and programs and should focus on the most meaningful results. Performance measures must be updated annually at a minimum.

Z. Amendments to the Budget.

1. Funds budgeted may be transferred by the commissioner from one budget item to another budgeted item in an amount not to exceed 12.5 percent of the budgeted item from which the transfer is made.
2. Revisions of Overall Expenditure Total. Budget revisions to one or more functional areas that increase the overall Department budget must receive the prior approval of the Commission.

XX. RESERVE POLICY

This policy is adopted by the Commission to serve as a framework for the Commission to determine the purpose, amount, and restrictions on reserves of the Department.

A. Objective. The Commission recognizes that maintaining sufficient reserves will ensure adequate funding for the needs and obligations of the agency including:

- Sustaining the agency through an unexpected financial crisis.
- Financing contingencies or emergencies as defined by the Commission.
- Purchasing equipment and repairing and maintaining facilities to assist staff in meeting the mission of the agency.
- Covering extraordinary liability claims and deductible levels specified in the agency's insurance policies.
- Funding required lump sum payments of accrued vacation and sick leave

Adequate reserves will minimize the impact of these events on future assessments and ensure that the resources used to generate today's programs are replaced by those credit unions that are receiving the benefits today.

B. Reserves for the Department. The Department will maintain a Contingency Fund Reserve consisting of six sub-accounts, each of which has a specific purpose, calculated level of need, and restrictions on use. The sum of the aggregate funds in the six sub-accounts is limited to \$1,050,000, unless a

different level is determined by the Commission to be necessary to sustain the Department's operations. The sub-accounts are:

1. Building & Equipment Account

Purpose: To provide funds for fixed asset purchases and deferred capital/maintenance projects to repair or renovate the Credit Union Department Building.

Restriction of use: The Commission may release funds from the Building and Equipment Account for each budget cycle that anticipates fixed asset purchases, or any time unanticipated major building repairs or maintenance expenses arise.

Level: The Building & Equipment Account will be equal to an amount deemed sufficient by the Commission to fund needs over the upcoming 5 years, which at a minimum balance shall be 2.5 percent of the Department operating budget or \$80,000, whichever is less. The following guidelines will be used in determining sufficiency of the fund level:

- Ongoing equipment replacement will be scheduled at regular intervals to minimize the impact on cash flow while preserving the agency's need for updated technology and facilities.
- Equipment needs specific to new program development and delivery will be included in those specific proposals rather than as part of the larger agency replacement and upgrade schedule.

2. Operations Account

Purpose: To provide operating funds to sustain the agency through an unexpected financial crisis or emergency.

Restriction of use: The Commissioner will advise the Commission of significant events affecting the agency that require use of the account. The Commission may release funds from the Operations Account.

Level: The Operations Account level should be sufficient to fund a total of one month of agency expenses or \$400,000, whichever is less. The examination and supervisory functions are considered essential to the mission of the Department and would be continued long-term, even in the event of economic or political adversity. One month is assumed to be a reasonable adjustment period. This timeframe is set to allow the Commission and management to determine which programs are essential to the continued operations of the agency, assess the factors that necessitate the use of account funds and make plans to operate within new parameters of the agency and its environment.

3. **Lump Sum Accrued Leave Payment Account**

Purpose: To provide funding to pay accrued vacation and sick leave as required by the [Texas Government Code Sections 661.031-038](#) and [Sections 661.061-068](#).

Restriction of use: The Commissioner will advise the Commission of significant events relating to an employee's separation/terminating state employment that require use of the account.

Level: The Lump Sum Accrued Leave Payment Account level should be sufficient to cover the projected accrued liability at the beginning of each fiscal year or \$200,000, whichever is less. The actual activity affecting the account will be evaluated annually to determine if the amount needs to be adjusted further. Actual payments of vacation and sick leave to retiring/terminating employees, and the appropriate payroll taxes and expenses thereon, will be the only charges to this account. Vacation or sick leave used will not be charged to this account.

4. **Audit Account**

Purpose: To provide funds to pay for unanticipated or excessively long audits by the State Auditor's Office or other State agencies.

Restriction of use: The Commission is authorized to release funds from the Audit Account for any unanticipated audit.

Level: The Audit Account will be not more than \$50,000.

5. **Enforcement & Regulatory Response Account**

Purpose: To provide a fund to bolster the examination and supervision programs when it is necessary to significantly increase monitoring of credit unions or to pay unusual legal costs associated with operating the Department or enforcing credit union compliance with applicable laws.

Restriction of use: The Commissioner will advise the Commission of significant events affecting the agency that require use of the funds. The Commission may release funds from the Enforcement & Regulatory Response Account.

Level: In order to lessen the effect on credit unions of a special assessment, the Enforcement & Regulatory Response Account will be not more than \$300,000.

6. Insurance Account

Purpose: To provide funds to cover extraordinary liability claims and deductible levels specified in the agency's insurance policies.

Restriction of use: The Commissioner will advise the Commission of significant events affecting the agency that require use of the funds. The Commission may release funds from the Insurance Account.

Level: The Insurance Account will be not more than \$20,000.

- C. **Investment of Reserve Funds.** Since capital preservation and liquidity are the two main objectives for the investment of Contingency Reserve funds, investments will be one with a short-term and safety focus. Following are the investment guidelines for the investment of reserve funds:

- Maturity for any investment should be no more than 12 months.
- At least 25 percent of the investments shall have a maturity of less than 90 days.
- All investments must be made through the Texas Treasury Safekeeping Trust Company.

All income earned from the investment of the funds contained in the Contingency Fund Reserve will be credited to the Operations Account.

- D. **Adjustment of Reserve Levels.** Account levels will be set each year in conjunction with the preparation of the Department's annual budget. Any funds in excess of the prescribed sub-account level or the Contingency Fund Reserve aggregate limit as of August 31 of each year shall be used to reduce the operating fees for Texas credit unions during the next fiscal year.

In the event that any of the account levels fall below the prescribed level, the Department will propose strategies to replenish the applicable account balances over a period not to exceed two years. The strategies for replenishing the accounts may include using one-time revenues, reducing expenses, suspending programs not linked to strategic goals, increasing revenues, or any combination of those strategies. If the results of the reserve drawn down and its replenishment causes an extreme burden on credit unions, then the replenishment may, by Commission approval extend beyond the two years to a maximum of four years.

XXI SECOND AMENDMENT-WEAPONS POLICY

This policy is adopted by the Commission to provide notice that the Credit Union Department will not impose any restriction on the carrying of firearms or other weapons beyond those permitted by law.

House Bill 1927, enacted as the Firearm Carry Act of 2021 (FCA), effective September 1, 2021, allows qualified individuals who are twenty-one (21) years of age or older, to carry open or concealed handguns without obtaining a license to open carry.

A licensed carrier (open or concealed) is permitted into an open meeting, unless otherwise permitted by law to be excluded. Pursuant to FCA, an unlicensed carrier is prohibited from going into the room or rooms where an open meeting is taking place if the governmental entity is holding an open meeting subject to Chapter 551 of the Texas Government Code (Texas Open Meetings Act, a/k/a TOMA) and has properly provided notice of the meeting under TOMA. Effective January 1, 2016, Texas law expands the scope of a license to carry a concealed handgun to include authorization to openly carry a handgun in a secure fashion. This policy is adopted by the Commission to provide notice that the Credit Union Department will not impose any restriction on the carrying of firearms or other weapons beyond those mandated by the Texas Legislature. Accordingly, a licensed peace officer or an individual licensed under Chapter 411, Subchapter H, of the Texas Government Code may carry a handgun openly or concealed in the Credit Union Department Building in accordance with Texas law.

APPENDIX

DECISION MATRIX

(subject to legislative appropriation requirements)

	<u>Description of Decision</u>	<u>Commission</u>	<u>Commissioner</u>
Commissioner Compensation/Responsibilities			
1.	Commissioner's compensation	D	A
2.	Approval of Commissioner serving in position with other organizations	D	A
3.	Evaluation of Commissioner's performance	D	A
4.	Commission's resolution	D	A
Personnel Issues			
1.	Determine number of staff	D	A
2.	Individual salaries for staff		D
3.	Employment/appointment of staff	M	D
4.	Appointment & Termination Deputy Commissioner	A	D
5.	Hire part-time and short-term temps	M	D
6.	Determine number & qualifications of staff	M	D
7.	Change Department's administrative manual	A	D
8.	Staff development & training	M	D
9.	Administer Department's leave program		D
Organizational Structure			
1.	Change organizational structure of Department	A	D
2.	Change the staffing structure of the Department	A	D
Budget/Fiscal Control			
1.	Approval of the Department's Budget	D	R
2.	Administer Department Budget	A	D
3.	Approval to overspend certain categories of the budget	M	D
4.	Approval of claims for reimbursement made by Commission members		D*
5.	Approval of staff expenses on behalf of Department	A	D*
6.	Approval of all other expenditures within budget	A	D*

Revised September 5, 2019

7.	Safeguard the assets of the Department	M	D*
8.	Approval of supplemental budget requests	D	R
9.	Disbursements to pay for the purchase of items within budget limits, pay re-occurring expenses, contract for services which are within budget limits		D*
10.	Execute third party contracts & interagency Agreements within budget	M	D
11.	Approval to seek outside legal counsel	D	R

Public Policy Decisions

1.	Decisions about public policy on issues	D	R
2.	Explanation & promotion of Commission's public policy on issues	A/M	D
3.	Execute agreements with public policy implications	D	A

Supervision/Regulatory Decisions

1.	Adopt Administrative Rules	D	R
2.	Approve standardized bylaws and articles of incorporation	D	R
3.	Approve applications for charters, bylaw amendments, and amendments to articles of incorporation	A/M/X	D
4.	Approve applications for mergers, consolidations, name changes, and conversions	A/M	D
5.	Approve Foreign Credit Union to do business in this State		
6.	Administer examination program		D
7.	Enter into written agreements with credit unions		D
8.	Issue Cease & Desist Orders	A	D
9.	Issue Orders of Removal from office or employment	A	D
10.	Assess civil penalty	A	D
11.	Institute a suit for injunction or other remedy provided by law	A	D
12.	Issue order of conservation & appoint conservator	A/X	D
13.	Issue order of liquidation & appoint liquidating agent	A	D
14.	Issue interpretations of the Act, Rules and Bylaws	A	D
15.	Enter into agreements with other regulators	A	D
16.	Approve request for Administrative Hearings	A	D
17.	Order non-binding Alternative Dispute Resolution	A	D

Key:

- A:** Advised by Decision Maker - This person or group must be advised about a decision which **has been made**.
- D:** Decision Maker - This person or group has the authority to make the decision.
- M:** May Be Consulted - This person or group may be called in to confer, provide related information, render advice or make recommendation.
- R:** Recommends to the Decision Maker - This person or group is responsible for making recommendations for decision making to (D) the decision maker.
- X:** Appellant Decision Maker - This group has the authority/obligation to review a protested decision
- *:** Authority but not responsibility may be delegated.

NEW COMMISSION MEMBER TRAINING PROGRAM

Section A: The Texas Credit Union Department (Required)

Purpose: Part one provides the organizational background of the Credit Union Department, with an introduction to the laws, rules, and budgeting procedures that govern how the Department operates. Part two provides an introduction to the Department's supervisory authority to include its disciplinary tools and investigatory authority. Part three provides an introduction to the requirements and policies on administrative procedure law and ethical consideration for State officials (conflict of interest, reporting requirements, revolving door, and gifts to public servants).

Outline:

- I. Department**
 - A. Composition of Commission**
 - 1. Appointment; Terms
 - 2. Qualifications of Commission Members
 - 3. Training Program
 - 4. Vacancies; Removal
 - 5. Expenses of Commission Members
 - 6. Suit for Official Act or Omission
 - 7. Meetings
 - 8. Sunset Provision
 - 9. Officers
 - B. Commissioner and Staff**
 - 1. Commissioner
 - 2. Deputy Commissioner
 - 3. Examiners
 - C. Powers and Duties of Commission**
 - 1. Supervision of Commissioner
 - 2. Adoption of Rules
 - 3. Legislative Recommendations
 - 4. Attendance at Commission Meetings
 - 5. Official Committees
 - D. Self-Directed Semi-Independent Status**
 - 1. Budget Process
 - 2. Current Operating Plan
 - 3. Budget Assumptions
 - E. Audits**
- II. Enforcement of Statutes and Rules**
 - A. Regulation of Credit Unions**
 - 1. Confidentiality
 - 2. Examinations

3. Approval Authority for Bylaw & Articles of Incorporation

Credit Union Commission Policies Manual Appendix B

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- B. Disciplinary Actions
 - 1. Written Agreements; Orders
 - 2. Conservation
 - 3. Mergers
 - 4. Liquidations
- III. Government Laws
 - A. Rulemaking
 - 1. Sources of Rules
 - 2. Notice of Proposed Rules
 - 3. Comments on Proposed Rules
 - 4. Emergency Rules
 - 5. Adopting Rules
 - B. Open Government
 - 1. Open Meeting Act
 - 2. Notice of Meetings
 - 3. Emergency Meetings
 - 4. Executive Sessions
 - 5. Minutes
 - 6. Violations
 - 7. Open Records Act
 - 8. Information Excepted from Disclosure
 - 9. Violations
 - C. Contested Cases
 - 1. Rights and Procedures
 - 2. Final Decisions
 - 3. Judicial Review
 - 4. Alternative Dispute Resolution
 - D. Ethics Laws
 - 1. The "Shoulds"
 - 2. Gifts, Gratuities, and Other Goodies
 - 3. Lobbying
 - 4. Official Misconduct
 - 5. Revolving Door
 - 6. Financial Disclosure

Section B: Open Government (Required)

Purpose: Appointed officials are required by a state law to receive training in Texas open government laws. The Office of the Attorney General has established formal training courses to ensure that all appointed government officials have a good command of both open records and open meetings laws. The Attorney General's Web site contains links and information designed to assist public officials in complying with open government training requirement and Texas open government laws.

Outline: None. Newly appointed members should view the two videos online at http://www.oag.state.tx.us/open/og_training.shtml and provide the “certificates of completion” to the Department. Otherwise, the training program must include the presentation of the two videos.

Section C: The Credit Union Movement (Required)

Purpose: Part One of this section provides the historical background of the credit union movement. Part Two provides an introduction to the basic principles and responsibilities of credit union management.

Outline:

- I. The Credit Union Difference**
 - A. What is a Credit Union?
 - B. Uniqueness in the Financial Services Industry
 - C. What’s the History of Credit Unions?
 - D. Who Regulates and Charters Credit Unions?
 - E. Who Insures Credit Union Deposits?
 - F. How is the Insurance Fund Financed?
 - G. Why Preserve the Dual Chartering System?
 - H. What Sets Credit Unions Apart?
 - 1. Texas Credit Union Department
 - 2. National Association of State Credit Union Supervisors
 - 3. National Credit Union Administration
 - 4. National Share Insurance Fund
 - 5. National Association of State Credit Union Supervisors
 - 6. World Council of Credit Unions
 - 7. International Credit Union Regulators Network

Section D: Credit Union On-Site Visitation (Optional)

Purpose: Created with new public members in mind, this optional course affords the member the opportunity to visit a credit union in his or her area and observe, first hand, its operations.

Outline: None; content is at the discretion of the credit union president/manager.

**CREDIT UNION DEPARTMENT, STATE OF TEXAS
COMMISSIONER SUCCESSION PLAN**

Purpose. The purpose of this succession plan ("the Plan") is to have a process for choosing a Commissioner in the event of a planned or unplanned departure of the incumbent.

Definitions.

A *planned departure* is a voluntary retirement or resignation, or a resignation requested by the Commission with an effective date of thirty days or more.

An *unplanned departure* is one that results by reason of death, an immediate termination of an incumbent Commissioner by the Commission, or the inability of the Commissioner to discharge the duties of the office. An unplanned departure may also be deemed to occur in the event of the Commissioner's resignation or retirement with an effective date of less than 30 days.

Inability of the Commissioner to discharge the duties of the office can be signified upon either:

1. A written declaration of the Commissioner that he or she is unable to discharge the duties and responsibilities of the office of Commissioner; or
2. Receipt by the Commission of information, which leads the Commission to conclude, in its sole judgment, that the Commissioner is unable to discharge the duties and responsibilities of the office of Commissioner.

Implementation. When this Plan becomes operative, the Commissioner Evaluation Committee ("the Committee") shall immediately assume responsibility for the succession process. The Committee will also serve as the Commission's search committee for purposes of carrying out the Plan. As soon as possible, the Chair of the Committee shall call for a meeting of the Committee to consider its action plan. This action plan should address, at least, the following matters:

1. If the incumbent Commissioner will continue in office, the effective date of the retirement or resignation. The date should be acceptable to the Commission and the Commissioner, should provide a reasonable time to search for a successor, and should be sufficiently in the future to permit orientation of the new Commissioner and an orderly transition.

2. If the incumbent Commissioner continues in office, whether there should be a change in the authority, duties, and responsibilities of the office.
3. The extent to which the Committee wishes to call upon the incumbent Commissioner and other staff members to assist the Committee during the transition to an interim or permanent Commissioner.
4. Whether an interim Commissioner will be required and, if so, the date upon which the person should assume office.
5. The identification of possible candidates for interim Commissioner and procedures for the selection of an interim Commissioner. The job description of the Deputy Commissioner specifies that he or she may exercise the powers and prerogatives of the Commissioner during the Commissioner's absence or inability to act.
6. Whether a search should be undertaken and, if so, how broad the search should be.
7. If a search is to be undertaken, whether to engage a consultant or search firm to assist the Committee with the search, and, if so, engaging the consultant or firm in accordance with State procurement requirements.
8. The Committee should also determine the specifics of the application process such as the deadline for applications, the confidentiality of its proceedings, procedures for identifying and interviewing candidates, whether to do background checks, procedures for narrowing the list of candidates, for checking references and for final interviews, whether final interviews should be conducted by the full Commission, and procedures for making an offer of employment.

Interim Commissioner. If the Committee determines that the appointment of an Interim Commissioner is necessary or advisable, the Chair of the Commission shall call for a meeting of the Commission to consider the matter. Any person appointed by the Commission as Interim Commissioner shall have the full authority for decision-making and independent action as the incumbent Commissioner. The Interim Commissioner shall receive a temporary salary increase to the entry-level salary of the Commissioner position (Schedule Exempt Position Salary Rates Group 5) or to 5% above his or her current salary, whichever is greater.

Transition Planning. In the case of any planned or unplanned departure of the incumbent Commissioner, the Chair of the Commission, the Chair of the Committee, and the incumbent or interim Commissioner shall meet as often as necessary to plan, among other matters, the following:

1. The availability of funds for the transition, including the potential compensation package to be offered to a Commissioner candidate.
2. The orderly transition of the duties and responsibilities of the office of Commissioner to any successor; and
3. The manner in which succession events (concerns with confidentiality, departure, selection process, press releases) are to be announced, including the notification of key interested persons.

Attributes. Candidates should have the requisite personal attributes for the office of Commissioner, including:

- Sufficient experience, stature, and reputation in the credit union movement, regulation, or professional life to command respect as Credit Union Commissioner.
- Professional and business management skills preferably gained in a credit union or regulatory agency.
- Experience of relationships at Board level in one or more major bodies.
- Intellectual strength, sound business acumen, integrity, and an ability to consider and discuss issues laterally and strategically.
- Awareness of political, regulatory, market, and consumer issues together with an understanding about not-for-profit cooperative financial institutions.
- Sound interpersonal skills and an ability to make good judgments of people.

Plan Review. The Committee shall review the Plan periodically in the context of current affairs within and outside of the Department. The review of the Plan should include a review of the most recent position description for the Commissioner. It should also include recommendations to the full Commission for any amendments to the Plan or to the Commissioner position description. In addition, after each use of the Plan, the Committee shall meet to discuss how the Plan worked and shall make recommendations for modifications to the Plan based on its experience with the Plan.

Enterprise Risk Appetite Statement

Purpose: to set a boundary around the amount and type of risk that the Commission is willing to take in order to meet its strategic goals and objectives.

WEAPONS POLICY

XXI. SECOND AMENDMENT WEAPONS POLICY

This policy is adopted by the Commission to provide notice that the Credit Union Department will not impose any restriction on the carrying of firearms or other weapons beyond those permitted by law.

House Bill 1927, enacted as the Firearm Carry Act of 2021 (FCA), effective September 1, 2021, allows qualified individuals who are twenty-one (21) years of age or older, to carry open or concealed handguns without obtaining a license to open carry.

A licensed carrier (open or concealed) is permitted into an open meeting, unless otherwise permitted by law to be excluded. Pursuant to FCA, an unlicensed carrier is prohibited from going into the room or rooms where an open meeting is taking place if the governmental entity is holding an open meeting subject to Chapter 551 of the Texas Government Code (Texas Open Meetings Act, a/k/a TOMA) and has properly provided notice of the meeting under TOMA. Effective January 1, 2016, Texas law expands the scope of a license to carry a concealed handgun to include authorization to openly carry a handgun in a secure fashion. This policy is adopted by the Commission to provide notice that the Credit Union Department will not impose any restriction on the carrying of firearms or other weapons beyond those mandated by the Texas Legislature. Accordingly, a licensed peace officer or an individual licensed under Chapter 411, Subchapter H, of the Texas Government Code may carry a handgun openly or concealed in the Credit Union Department Building in accordance with Texas law.

LEGAL COUNSEL

I. XIV. LEGAL COUNSEL

The General Counsel is the attorney for the Department. This includes the Commission, the Commissioner, and other Department officers and employees. The Commissioner, the Commissioner, and other Department staff officers and employees, and Commission members shall consult with the Attorney General's Office Department's General Counsel as needed on matters germane to their duties and responsibilities.

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When representation is warranted from the Attorney General's Office, the Department shall submit request for representation to the Attorney General's Office.

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Outside legal counsel other than the Attorney General shall be retained only upon approval of the Commission and Attorney General.

H

STATUS OF THE STATE CREDIT UNION SYSTEM

H. Status of the State Credit Union System.

BACKGROUND: The Texas economy continues to rebound from the impact of the COVID-19 pandemic. The unemployment rate for Texas declined to 5.0 percent at month-end December 2021, down from 6.5 percent six months earlier. The Texas Workforce Commission reported that Texas ended 2021 with approximately 13.06 million non-agricultural jobs, a Texas record, and about 90,000 jobs more than the pre-pandemic levels in February 2020. Additionally, approximately 50,000 nonagricultural jobs were added during the month of December alone. The number of unemployed in Texas totals approximately 713,000, down approximately 164,000, or 19 percent, during the last five months and significantly lower than the pandemic high of 1.73 million unemployed in April 2020. In addition, the unemployment rates for three of the four metropolitan areas in Texas remains below the national average of 3.9 percent. The continuation of the economic recovery will continue to center on the duration which original COVID-19 vaccines remain effective and the infection trends (i.e. number, severity, etc.) associated with new strains of the virus.

Overall, the financial performance of Texas credit unions was excellent during 2021. Capital strength for the Texas industry was sound, with earnings and asset quality performance ratios reaching their strongest levels over the last seven years. The strong financial performance for Texas state-chartered credit unions is depicted as follows:

Key Ratio	2015	2016	2017	2018	2019	2020	2021
Net Worth/Total Assets	10.12	10.26	10.30	10.82	11.10	10.36	10.43
Delinquent Loans/Total Loans	0.76	0.82	0.89	0.75	0.71	0.75	0.52
Net Charge-Offs/Average Loans	0.59	0.69	0.75	0.68	0.69	0.57	0.36
Return on Average Assets	0.87	0.62	0.71	0.88	0.88	0.70	1.08

Note: Highlighted fields represent the best year-end financial performance ratios over the last seven years.

Earnings performance data for Texas credit unions reflects that strong net income performance is strengthening net worth ratios. Further, absent any unforeseen

stimulus payments, it is anticipated that deposit and asset growth will be controlled at a modest to moderate level during 2022 and will result in further enhancement of net worth positions for Texas charters. While the outlook for the Texas industry appears positive, it will remain imperative for credit unions to adapt to the ever-changing economic trends (i.e. inflation, etc.), and political implications (i.e. local, national and worldwide) to safeguard the financial interests of millions of Texans.

INDUSTRY STATUS: At **December 31, 2021**, there were **175** state-chartered credit unions in Texas, down one charter from the previous twelve months. Assets in these credit unions totaled **\$56.15 billion**, an increase of **\$5.45 billion** since **December 31, 2020**, for an annualized growth rate of **10.8 percent**. The average net worth ratio is **10.43 percent**, which is the **same level** from twelve months ago.

Loans for Texas chartered credit unions totaled **\$37.41** as of **December 31, 2021**. This is an increase of **\$2.84 billion** since **December 31, 2020**, for an annualized growth rate of **8.2 percent**.

Shares for Texas chartered credit unions totaled **\$48.94 billion** as of **year-end 2021**. This is an increase of **\$4.80 billion**, or **10.9 percent** since **December 31, 2020**.

Texas chartered credit unions average loan delinquency ratio has declined significantly to **0.52 percent** as of **December 31, 2021**, compared to a ratio of **0.75 percent** as of **December 31, 2020**.

At **December 31, 2021**, **20** state-chartered credit unions (4 less than the same period from a year ago) reported year to date net operating losses of **\$3.33 million**; while the remaining **155** credit unions reported aggregate net income of **\$579.75 million**. A breakdown of the number of credit unions with positive earnings performance, by asset category, is as follows:

Assets Size	# of CUs	# Profitable	% Profitable (12-31-2021)	% Profitable (12-31-2020)	% Profitable (06-30-2020)
\$1 Billion and Over	16	16	100%	92%	92%
\$500 to \$999.9 Million	15	15	100%	86%	64%
\$250 to \$499.9 Million	15	15	100%	94%	79%
\$100 to \$249.9 Million	24	23	96%	92%	92%
\$50 to \$99.9 Million	23	21	91%	83%	82%
\$10 to \$49.9 Million	48	42	88%	94%	76%
Under \$10 Million	34	23	68%	69%	55%
Totals	175	155	89%	86%	76%

PROBLEM INSTITUTIONS: As of **December 31, 2021**, there were **22** credit unions assigned a CAMELS rating of 3 or higher, compared to **17** credit unions at **December 31, 2020**. Credit unions in this category are monitored through a combination of off-site monitoring, regular on-site or remote contacts, and ongoing reviews for compliance with outstanding Documents of Resolution and other supervisory agreements or orders.

ENFORCEMENT ISSUES: As of **September 30, 2021**, the Department had the following administrative sanctions outstanding:

Dividend Restrictions	0
LUAs	0
Determination Letters	0
Conservatorships	1
Cease and Desist	3

CHARTERING ACTIVITY

New Charters*	0
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*Since last commission meeting

RECOMMENDED ACTION: No formal action is anticipated

I

AUDIT COMMITTEE REPORT

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

- 1) Consideration and Potential Action of Internal Auditing Services Contract.
- 2) Annual Internal Risk Assessment Report.

RECOMMENDED ACTION: The Commissioner Evaluation Committee recommends that the Commission accept the Committee's report as presented and approve the recommended action of the internal auditing services contract and the annual internal risk assessment report.

REQUEST FOR INTERNAL AUDITOR SERVICES CONTRACT

I. (1) Discussion, Consideration and Potential Action of Internal Auditing Services Contract.

BACKGROUND: As part of the sunset review process, a recommendation was made asking the Department to initiate an internal audit program that exceeds statutory requirements for an Agency of the Department's size and nature. Department management and the Commission agreed to implement a program and formed an Audit Committee, whose first meeting was held in June 2021. The Audit Committee has been working with Commissioner Kolhoff to initiate the required procurement process. Thereafter, the Department solicited bids for qualified Respondents and subsequently received bids from Respondents for review of the Department's requirements and qualifications posted in the solicitation.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission to approve and adopt staff's recommendation regarding awarding the internal auditor contract.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve staff's recommendation regarding awarding the internal auditor contract.

**ANY ADDITIONAL MATERIAL WILL BE SUPPLIED
AT THE MEETING**

INTERNAL RISK ASSESSMENT REPORT

I. (2) Department's Annual Risk Assessment Report for FY 2022 as Required by Section 2102.004, Government Code.

BACKGROUND: Section 2102.013 of the Texas Government Code requires state agencies which meet certain requirements to conduct a formal risk assessment each year and submit the assessment to the State Auditor's Office. The Department has completed the internal risk review and has prepared the required written assessment of the risks for submission to the State Auditor's Office.

RECOMMENDED ACTION: The Department requests that the Commission approve the 2022 Internal Risk Assessment Report and authorize its submission to the State Auditor's Office.

RECOMMENDED MOTION: I move that the Commission approve the Department's Internal Risk Assessment Report for FY 2022 and authorize its submission to the State Auditor's Office.

Small Agency Risk Assessment - Fiscal Year 2022
Activities from Brainstorming - Credit Union Department

1	perform regular and remedial credit union examinations	13	purchasing (equipment, supplies, services)	25	approve/ deny applications	37	maintain security of office building	49	
2	monitor credit unions	14	report to state agencies	26	pay bills	38	work with federal regulator(s)	50	
3	answer questions from credit unions and public	15	prepare, edit and issue examination reports	27	maintain financial records	39	work with state regulating agencies	51	
4	hire employees	16	manage office paperwork	28	prepare/submit financial reports to applicable parties	40	prepare for new programs	52	
5	maintain employee policies & records	17	comply with state/ federal regulations	29	maintain the agency's server, desktop/laptop computer security	41	maintain NASCUS accreditation	53	
6	manage employees	18	respond to credit union member complaints (of credit union and agency)	30	cybersecurity-raising awareness and educating users	42	maintain building and its infrastructure	54	
7	manage/monitor examiner travel	19	manage computer system, including hardware and software	31	maintain agency website	43	maintain all agency's asset inventory	55	
8	manage examination schedule	20	issue interpretations and opinions	32	Meet the IT requirements of the agency and all stakeholders	44	maintain agency's consumable supply inventory	56	
9	meet with industry representatives	21	review, revise rules	33	Inventory and maintain database of IT infrastructure and IT assets	45	Maintain Risk Management program	57	
10	hold Commission & committee meetings	22	publishing rules	34	maintain agency procedures and policies	46	Maintain Continuity of Operations Plan	58	
11	hold public hearings	23	provide new rules to credit unions	35	report to Legislature	47		59	
12	report to Commission	24	receive, review, & publish applications	36	draft legislation	48		60	

Small Agency Risk Assessment - Fiscal Year 2022
Consolidated Activities - Credit Union Department

CONSOLIDATED ACTIVITIES		PRIORITIZED CONSOLIDATED ACTIVITIES
Finance and Accounting		1 Perform Cost-Effective Comprehensive Examinations of Credit Unions
Purchasing		2 Process, Investigate, and Evaluate Applications
IT Infrastructure and cybersecurity		3 Finance and Accounting
Human Resources Management		4 IT Infrastructure and cybersecurity
Process, Investigate, and Evaluate Applications		5 Purchasing
Complaints and Education		6 Human Resources
Perform Cost-Effective Comprehensive Examinations of Credit Unions		7 Complaints and Education
		8

Small Agency Risk Assessment - Fiscal Year 2022
Risk Assessment Table - Pre-Controls - Credit Union Department

[illegible]

Small Agency Risk Assessment - Fiscal Year 2022
Risk Management Table - Credit Union Department
Consolidated Activity

<div> <div>RISKS →</div> <div>CONTROL STEPS ↓</div> </div>	Inconsistent enforcement	Employee turnover/ inexperienced staff/morale issues	Inconsistent exam procedures/ exam integrity	Loss of Agency Credibility	Lack of adequate training for staff	Failure of CUs	Failure to meet deadlines	Loss of CUs as low cost financial institutions	
Standardized exam software program	x		x	x	x	x	x		
Review of all exam reports by Department (random sample reviewed by Field Supervisors)	x		x	x	x	x	x	x	
NASCUS accreditation & annual review	x		x	x	x	x		x	
Joint oversight with deposit insurer	x		x	x	x	x		x	
Training program (including OTJ training and specialized courses)	x	x	x	x	x	x	x	x	
Regular employee performance evaluations	x	x	x	x	x		x		
Quarterly monitoring of CU financial data by both field and office staff	x	x	x	x	x	x		x	
Periodic rule review by Commission	x		x	x		x		x	
Career ladder/merit raises		x		x					
Experienced management oversight	x	x	x	x	x	x	x	x	
Examiner's Guide	x		x	x	x	x		x	
Performance measures	x			x	x		x		
Management information systems	x		x	x	x	x	x		
Technology tools for field examiners	x	x	x	x	x	x	x	x	

Risk Assessment Table - Post-Controls - Credit Union Department

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Small Agency Risk Assessment - Fiscal Year 2022
Significant Changes in
Risk Assessment - Credit

NEW Activities, Risks, and/or Controls from Prior Year Submission List by Consolidated Activity	Annual Fire alarm system inspection was completed.
	Completed SORM Physical risk management audit of the Credit Union Department building. Findings and recommendations were implemented.

Small Agency Risk Assessment - Fiscal Year 2022
Audit History - Credit Union Department

Fiscal Year Conducted	Type of Audit/Review	Audited/Reviewed Activity	Entity Conducting Audit/Review
2018	Post Payment Audit	Payroll, Purchasing, Procurement and Travel Expenditures compliance with state laws and regulations	Comptroller of Public Accounts
2019	Risk Management Program Review	<ul style="list-style-type: none"> • The SORM-200 data for FY18 was reviewed for completeness and accuracy. • The agency's Annual Report, COOP Plan, Emergency Procedures Manual, Safety & Health Manual, and Personnel Manual were reviewed. • The Risk Evaluation and Planning System Questions (REPS) were reviewed. • SORM reviewed and discussed the following workers' compensation insurance data and claims with CUD during the consultation. • SORM conducted an On-Site Consultation (OSC) of CUD, performing a walkthrough of the agency. 	State Office of Risk Management
2020	SORM Building Risk Management	Credit Union Department building inspection and walk-through. Findings and recommendations were implemented.	State Office of Risk Management
2022	NASCUS accreditation review	Accreditation standards in these five areas: 1. Agency Administration & Finance 2. Personnel and Training 3. Examination 4. Supervision 5. Legislative Powers	The National Association of State Credit Union Supervisors (NASCUS)

J

COMMISSIONER EVALUATION COMMITTEE REPORT

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

- 1) Consideration of Report and Recommendations Related to the Commissioner's FY 2022 Performance Review Plan.

RECOMMENDED ACTION: The Commissioner Evaluation Committee recommends that the Commission accept the Committee's report as presented and approve the recommended Commissioner Performance Review Plan.

**ANY ADDITIONAL MATERIAL WILL BE SUPPLIED
AT THE MEETING**

K

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.
2. The proposed rule is presented to the commission for consideration.
3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.
4. The proposed rule is adjusted by staff (if required), furnished to legal counsel, and transmitted to the **Texas Register** for publication as a "proposed" rule.
5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.
6. The commission may reconsider the rule any time after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.
7. The rule is adopted as "final" and transmitted to the ***Texas Register*** for publication as a final rule. The rule becomes effective 20 days following filing for publication.
8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

Rules, which are approved by the commission for emergency adoption, are transmitted to the ***Texas Register*** for filing. These rules become effective immediately upon filing unless another effective date is specified. They can be effective only for 120 days with a renewal provision for an additional 60 days a maximum of 180 days. "Day one" is the day of filing or the date specified as the effective date. While these emergency rules are in effect, regular rules should be initiated using the normal procedure described above. The Department rarely adopts emergency rules.

PROCEDURES FOR REQUIRED RULE REVIEW

Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. To comply with this requirement, the Commission follows the procedure below:

1. Every four years, the Commission adopts and publishes a Rule Review Plan, which establishes a date for the required review of each existing rule.
2. At least sixty days prior to a particular rule's scheduled review date, the Department publishes notice in the Newsletter reminding interested persons of the review and encouraging comments on the rules up for review.
3. Staff reviews each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule's structure as well as the specific language used is both clear and understandable.
4. If in reviewing existing rules, staff believes certain amendments may be appropriate, it provides an informal comment phase on any potential substantive amendments to all interested persons via its RuleRemarks blog on the Department's webpage.
5. After consideration of the informal comments, proposed amendments are prepared by staff and presented to the Rules Committee for review.
6. At a public meeting, the Rules Committee accepts public testimony on each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
7. The Committee's recommendation is presented to the Commission for consideration.
8. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
9. If the Commission approves the proposal for publication, it is transmitted to the *Texas Register* for publication as a "proposed" rule amendment.
10. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
11. The commission may reconsider the rule any time after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in re-publication of the proposal.

12. The rule as amended is adopted and transmitted to the *Texas Register* for publication as a final rule. The rule becomes effective 20 days following filing for publication.
13. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

RULEMAKING MATTERS

Three items are being presented to the Commission for its information, consideration, and/or possible action. Specifically, the Commission will discuss, consider and possibly take action on:

- 1) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter G (Lending Powers) and Re-adoption of Rules.
- 2) Proposed Amendments to 7 TAC, Part 8, Chapter 91.720 (Small-Dollar, Short-Term Credit).
- 3) Proposed Amendments to 7 TAC, Part 8, Chapter 153 (Home Equity Lending).

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

MANDATORY RULE REVIEW

K. (1) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter G (Lending Powers) and Re-adoption of Rules.

BACKGROUND: Section 2001.039, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its February 2020 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC, Part 6, Chapter 91, Subchapter G (Lending Powers) and is recommending that one change be made.

Notice of the review and a request for comments on the rules in this chapter was published in the December 24, 2021 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rules continue to exist.

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

RECOMMENDED MOTION: I move that the Commission find that the reasons for adopting 7 TAC, Part 6, Chapter 91, Subchapter G (Lending Powers) continue to exist and readopt these rules.

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

The Credit Union Commission (Commission) has completed its review of Chapter 91 Subchapter G (relating to Lending Powers) respectively.

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

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapters G were published in the *Texas Register* as required on December 24, 2021 (46 TexReg 9063). The Department received no formal comment on the notice of intention to review.

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

Subchapter G. Lending Powers

§91.701. Lending Powers.

(a) **Authorization.** A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) **Written Policies.** Before engaging in any lending activity, each credit union shall establish written lending policies that set prudent credit underwriting and documentation standards for each specific type of lending activity. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

- (1) Be consistent with safe and sound credit union practices;
- (2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;
- (3) Be compatible with the size and expertise of the credit union's lending staff;
- (4) Be compliant with all related laws and regulations;
- (5) Be reviewed and approved by the credit union's board of directors at inception and annually, thereafter;
- (6) Address loan portfolio diversification standards to avoid undue concentrations of risk;
- (7) Address loan documentation and underwriting standards that are clear and measurable;
- (8) Address loan administration procedures for monitoring the loss exposure from the loan portfolio;
- (9) Address loan pricing guidelines to ensure that the rate of return is consistent with the risk from the lending activity; and
- (10) State the lending authority delegated to any individuals or committees by the board of directors.

(c) **Loan Documentation.** The lending policies shall include loan documentation practices that:

- (1) Enable the credit union to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; and
- (3) Ensure that any claim against a member is legally enforceable.

(d) **Credit Underwriting.** A credit union shall establish and maintain prudent credit underwriting practices that:

- (1) Are commensurate with the types of loans the credit union will make and consider the terms and conditions under which they will be made;
- (2) Consider the nature of the markets in which loans will be made;
- (3) Provide for consideration of the member's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the member's character and willingness to repay as agreed;
- (4) Take adequate account of concentration of credit risk; and
- (5) Are appropriate to the size of the credit union and the nature and scope of its activities.

(e) **Loan Maturity Limit.** Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of any loan or extension of credit to a member may not exceed 15 years. Minimum payments, on a line of credit balance must be sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization.

(f) Liquidity. In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(g) Waivers. The commissioner in the exercise of discretion may grant a waiver in writing of any lending requirement described in this chapter. A decision to deny a waiver, however, is not subject to appeal. A waiver request must contain the following:

- (1) The requirement to be waived, the higher limit or the ratio sought;
- (2) An explanation of the need for the waiver or to raise the limit or ratio; and
- (3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

§91.703. Interest Rates.

(a) Loans made by each credit union shall bear interest at a rate or rates as may be determined by the credit union's board of directors. A board may delegate all or part of its power to determine the interest rates on any lending transactions. The board may also authorize a refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

§91.704. Real Estate Lending.

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) Home loan means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Finance Code <*>347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.

(4) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(6) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:

- (1) Title insurance;
- (2) Escrow administration;
- (3) Loan payoffs;
- (4) Collection and foreclosure; and
- (5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish its own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

- (A) Unimproved land held for investment/speculation--Loan to value limit 60%
- (B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%
- (C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%
- (D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%
- (E) Other residential real estate such as a second or vacation home--Loan to value limit 90%
- (F) Home equity--Loan to value limit 80%
- (G) All Other--Loan to value limit 80%

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the outstanding balances, plus any unfunded commitment or line of credit from all sources on an item of collateral, divided by the market value of the collateral used to secure the loan.

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, credit unions engaged in real estate lending are expected to have loan policies that establish prudent standards for loan structure including tenor and amortization that are within the risk parameters approved by the board of directors and consistent with the following regulatory limits:

- (1) Improved residential real estate loans (principal residence, first lien)--40 years
 - (2) Improved residential real estate loans (secondary residence, first lien)--30 years
 - (3) Improved residential real estate loans (investment property, first lien)--20 years
 - (4) Interim construction loans--18 months
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- (5) Manufactured home (first lien)--20 years
 - (6) Home equity loans--20 years (second lien)--30 years (first lien)
 - (7) Home improvement loans--20 years
 - (8) A loan secured in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government or any agency of the Federal Government, may be made for the maturity specified in the law, regulations or program under which the insurance, guarantee or commitment is provided
- (e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan." "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.
- (f) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories:
- (1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.
 - (2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
 - (3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.
 - (4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.
 - (5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.
 - (6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.
- (g) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.
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(h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

§91.705. Home Improvement Loans.

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

§91.706. Home Equity Loans.

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

§91.707. Reverse Mortgages.

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

§91.708. Real Estate Appraisals or Evaluations.

(a) Policies and Procedures. A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.

(b) Loans Over \$400,000. For real estate loans in which the loan amount or extension of credit exceeds \$400,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.

(c) Loans \$400,000 or Less. For real estate loans with a loan amount or extension of credit of \$400,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral that is supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations or from tax appraisal data of a governmental entity.

(d) Right to Require an Appraisal. The commissioner may require an appraisal under this section, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the collateral is overstated.

(e) Existing Loans. In the case of renewal of a loan where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of additional funds, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

(f) Other Appraisal Requirements. A credit union shall also comply with applicable real estate appraisal requirements contained within Part 722 of the National Credit Union Administration Rules and Regulations.

§91.709. Member Business and Commercial Loans.

(a) Definitions. Definitions in TEX. FIN. CODE §121.002, are incorporated herein by reference. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Borrower" means a member or any other person named as a borrower, obligor, or debtor in a loan or extension of credit; or any other person, including, but not limited to, a comaker, drawer, endorser, guarantor or surety who is considered to be a borrower under the requirements of subsection (i) of this section concerning aggregation and attribution for commercial loans.

(2) "Commercial loan" means a loan or an extension of credit to an individual, sole proprietorship, partnership, corporation, or business enterprise for commercial, industrial, agricultural, or professional purposes, including construction and development loans, any unfunded commitments, and any interest a credit union obtains in such loans made by another lender. A commercial loan does not include a loan made for personal expenditure purposes; a loan made by a corporate credit union; a loan made by a credit union to a federally insured credit union; a loan made by a credit union to a credit union service organization; a loan secured by a 1- to 4-family residential property (whether or not the residential property is the borrower's primary residence); a loan fully secured by shares in the credit union making the extension of credit or deposits in another financial institution; a loan secured by a vehicle manufactured for household use; and a loan that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balance plus unfunded commitments less any portion secured by shares in the credit union to a borrower, is equal to less than \$50,000.

(3) "Control" means a person directly or indirectly, or acting through or together with one or more persons who:

(A) own, control, or have the power to vote twenty-five (25) percent or more of any class of voting securities of another person;

(B) control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) have the power to exercise a controlling influence over the management or policies of another person.

(4) "Immediate family member" means a spouse or other family member living in the same household.

(5) "Loan secured by a lien on a 1- to 4-family residential property" means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the

real estate collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(6) "Loan secured by a lien on a vehicle manufactured for household use" means a loan that, at origination, is secured wholly or substantially by a lien on a new and used passenger car or other vehicle such as a minivan, sport-utility vehicle, pickup truck, and similar light truck or heavy-duty truck generally manufactured for personal, family, or household use and not used as a fleet vehicle or to carry fare-paying passengers, for which the lien is central to the extension of credit. A lien is central to the extension of credit if the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan wholly or substantially secured by a lien on a vehicle manufactured for household use if the estimated value of the collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(7) "Loan-to-value ratio for collateral" means the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements.

(8) "Member business loan" has the meaning assigned by 12 C.F.R. Part 723.

(9) "Net worth" has the meaning assigned by 12 C.F.R. Part 702.2.

(10) "Readily marketable collateral" means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(11) "Residential property" means a house, townhouse, condominium unit, cooperative unit, manufactured home, a combination of a home or dwelling unit and a business property that involves only minor or incidental business use, real property to be improved by the construction of such structures, or unimproved land zoned for 1- to 4-family residential use but does not include a boat, motor home, or timeshare property, even if used as a primary residence. This applies to such structure whether under construction or completed.

(b) Parity. A credit union may make, commit to make, purchase, or commit to purchase any member business loan it could make if it were operating as a federal credit union domiciled in this state, so long as for each transaction the credit union complies with all applicable regulations governing such activities by federal credit unions. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

(c) Commercial Loan Responsibilities and Operational Requirements. Prior to engaging in the business of making commercial loans, a credit union must address the responsibilities and operational requirements under this subsection:

(1) Written policies. A credit union must establish comprehensive written commercial loan policies approved by its board of directors instituting prudent loan approval, credit underwriting, loan documentation, and loan monitoring standards in accordance with this paragraph. The board must review its policies at least annually and, additionally, prior to any material change in the credit union's commercial lending program or related organizational structure, in response to any material change in the credit union's overall portfolio performance, or in response to any material change in economic conditions affecting the credit union. The board must update its policies when warranted. Policies under this paragraph must be designed to identify:

- (A) type(s) of commercial loans permitted;
- (B) trade area;
- (C) the maximum amount of assets, in relation to net worth, allowed in secured,

unsecured, and unguaranteed commercial loans and in any given category or type of commercial loan and to any one borrower;

(D) credit underwriting standards including potential safety and soundness concerns to ensure that action is taken to address those concerns before they pose a risk to the credit union's net worth; the size and complexity of the loan as appropriate to the size of the credit union; the scope of the credit union's commercial loan activities; the level and depth of financial analysis necessary to evaluate financial trends and the condition of the borrower and the ability of the borrower to meet debt service requirements; requirements for a borrower-prepared projection when historic performance does not support projected debt payments; the financial statement quality and degree of verification sufficient to support an accurate financial analysis and risk assessment; the methods to be used in evaluating collateral authorized, including loan-to-value ratio limits; the means to secure various types of collateral; and other risk assessment analyses including analysis of the impact of current market conditions on the borrower.

(E) loan approval standards including consideration, prior to credit commitment, of the borrower's overall financial condition and resources; the financial stability of any guarantor; the nature and value of underlying collateral; environmental assessment requirements; the borrower's character and willingness to repay as agreed; the use of loan covenants when warranted; and the levels of loan approval authority commensurate with the proficiency of the individuals or committee of the credit union tasked with such approval authority in evaluating and understanding commercial loan risk, when considered in terms of the level of risk the borrowing relationship poses to the credit union;

(F) loan monitoring standards including a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; the concentration of credit risk; and the risk management systems under subsection (d) of this section; and

(G) loan documentation standards including enabling the credit union to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identifying the purpose of each loan and source(s) of repayment; assessing the ability of each borrower to repay the indebtedness in a timely manner; ensuring that any claim against a borrower is legally enforceable; and demonstrating appropriate administration and monitoring of each loan.

(2) Qualified Staff. A credit union must ensure that it is appropriately staffed with qualified personnel with relevant and necessary expertise and experience for the types of commercial lending in which the credit union is engaged, including appropriate experience in underwriting, processing, overseeing and evaluating the performance of a commercial loan portfolio, including rating and quantifying risk through a credit risk rating system and collections and loss mitigation activities for the types of commercial lending in which the credit union is engaged. At a minimum, a credit union making, purchasing, or holding any commercial loans must internally have a senior management employee that has a thorough understanding of the role of commercial lending in the credit union's overall business model and establish risk management processes and controls necessary to safely conduct commercial lending as provided by subsection (d) of this section.

(3) Use of Third-Party Experience. A third party may provide the requisite expertise and experience necessary for a credit union to safely conduct commercial lending if:

(A) the third party has no affiliation or contractual relationship with the borrower;

(B) the third party is independent from the commercial loan transaction and does not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:

(i) the third party may provide a service to the credit union that is

related to the transaction, such as loan servicing;

(ii) the third party may provide the requisite experience to a credit union and purchase a loan or a participation interest in a loan originated by the credit union that the third party reviewed; and

(iii) the third party is a credit union service organization and the credit union has a controlling financial interest in the credit union service organization as determined under generally accepted accounting principles.

(C) the actual decision to grant a commercial loan resides with the credit union; and

(D) qualified credit union staff exercise ongoing oversight over the third party by regularly evaluating the quality of any work the third party performs for the credit union.

(4) De Minimis Exception. The responsibilities and operational requirements described in paragraphs (1) and (2) of this subsection do not apply to a credit union if it meets all of the following conditions:

(A) the credit union's total assets are less than \$250 million;

(B) the credit union's aggregate amount of outstanding commercial loan balances (including any unfunded commitments, any outstanding commercial loan balances and unfunded commitments of participations sold, and any outstanding commercial loan balances and unfunded commitments sold and serviced by the credit union) total less than fifteen (15) percent of the credit union's net worth; and

(C) in a given calendar year, the amount of originated and sold commercial loans and the amount of originated and sold commercial loans the credit union does not continue to service, total fifteen (15) percent or less of the credit union's net worth.

(D) A credit union that relies on this de minimis exception is prohibited from engaging in any acts or practices that have the effect of evading the requirements of this subsection.

(d) Commercial Loan Risk Management Systems.

(1) Risk Management Processes. A credit union's risk management process must be commensurate with the size, scope and complexity of the credit union's commercial lending activities and borrowing relationships. The processes must, at a minimum, address the following:

(A) use of loan covenants, if appropriate, including frequency of borrower and guarantor financial reporting;

(B) periodic loan review, consistent with loan covenants and sufficient to conduct portfolio risk management, which, based upon current market conditions and trends, loan risk, and collateral conditions, must include a periodic reevaluation of the value and marketability of any collateral, and an updated loan-to-value ratio for collateral calculation;

(C) a credit risk rating system under paragraph (2) of this subsection; and

(D) a process to identify, report, and monitor commercial loans that are approved by the credit union as exceptions to the credit union's loan policies.

(2) Credit Risk Rating System. The credit risk rating system must be a formal process that identifies and assigns a relative credit risk rating to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score must be determined through an evaluation of quantitative factors based on the financial performance of each commercial loan and qualitative factors based on the credit union's management, operational, market, and business environment factors. A credit risk rating must be assigned to each commercial loan at the inception of the loan. A credit risk rating must be reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles.

(3) Independent Review. Periodic independent reviews should be conducted by a person who is both qualified to conduct such a review and independent of the function being reviewed.

The review should provide an objective assessment of the overall commercial loan portfolio quality and verify the accuracy of ratings and the operational effectiveness of the credit union's risk management processes. A credit union is not required to hire an outside third party to conduct this independent review, if it can be done in-house by a competent person that is considered unconnected to the function being reviewed.

(e) Collateral and Security for Commercial Loans.

(1) Collateral. A commercial loan must be secured by collateral commensurate with the level of risk associated with the size and type of the commercial loan. The collateral must be sufficient to ensure the credit union is protected by a prudent loan-to-value ratio for collateral along with appropriate risk sharing with the borrower and principal(s). A credit union making an unsecured commercial loan must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk of making an unsecured loan.

(2) Personal Guarantees. A credit union that does not require the full and unconditional personal guarantee from all principals of the borrower who have a controlling interest, as defined by subsection (a)(3) of this section, in the borrower must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

(f) Construction and Development Loans.

(1) Terms. In this subsection:

(A) "construction or development loan" means any financing arrangement to enable the borrower to acquire property or rights to property, including land or structures, with the intent to construct or renovate an income producing property, such as residential housing for rental or sale, or a commercial building, that may be used for commercial, agricultural, industrial, or other similar purposes. It also means a financing arrangement for the construction, major expansion or renovation of the property types referenced in this subsection. The collateral valuation for securing a construction or development loan depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed. A loan to finance maintenance, repairs, or other improvements to an existing income-producing property that does not change the property's use or does not materially impact the property is not a construction or development loan.

(B) "cost to complete" means the sum of all qualifying costs necessary to complete a construction project and documented in an approved construction budget. Qualifying costs generally include on- or off-site improvements; building construction; other reasonable and customary costs paid to construct or improve a project, including a general contractor's fees; other expenses normally included in a construction contract such as bonding and contractor insurance; the value of the land, determined as the sum of the cost of any improvements to the land and the lesser of appraised market value or purchase price; interest as provided by this subparagraph; project costs as provided by this subparagraph; a contingency account to fund unanticipated overruns; and other development costs such as fees and related pre-development expenses. Interest expense is a qualifying cost only to the extent it is included in the construction budget and is calculated based on the projected changes in the loan balance up to the expected "as-complete" date for owner-occupied non-income-producing commercial real property or the "as stabilized" date for income-producing real estate. Project costs for related parties, such as developer fees, leasing expenses, brokerage commissions and management fees, are included in qualifying costs only if reasonable in comparison to the cost of similar services from a third party. Qualifying costs exclude interest or preferred returns payable to equity partners or subordinated debt holders, the developer's general corporate overhead, and selling costs to be funded out of sales proceeds such as brokerage commissions and other closing costs.

(C) "prospective market value" means the market value opinion determined by an independent appraiser in compliance with the relevant standards set forth in the Uniform Standards

of Professional Appraisal Practice. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two (2) prospective value opinions may be required to reflect the time frame during which development, construction, or occupancy occur. The prospective market value “as-completed” reflects the real property’s market value as of the time that development is to be completed. The prospective market value “as-stabilized” reflects the real property’s market value as of the time the real property is projected to achieve stabilized occupancy. For an income producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the real property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar real properties.

(2) Policies. A credit union that elects to make a construction or development loan must ensure that its commercial loan policies under subsection (c) of this section meets the following conditions:

(A) qualified personnel representing the interest of the credit union must conduct a review and approval of any line item construction budget prior to closing the loan;

(B) a requisition and loan disbursement process approved by the credit union is established;

(C) release or disbursement of loan funds occurs only after on-site inspections which are documented in a written report by qualified personnel who represents the interest of the credit union and certifies that the work requisitioned for payment has been satisfactorily completed, and the remaining funds available to be disbursed from the construction and development loan is sufficient to complete the project; and

(D) each loan disbursement is subject to confirmation that no intervening liens have been filed.

(3) Establishing Collateral Values. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements. The collateral value depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed and is the lesser of the project’s cost to complete or its prospective market value.

(4) Controls and Processes for Loan Advances. A credit union that elects to make a construction and development loan must have effective commercial loan control procedures in place to ensure sound loan advances and that liens are paid and released in a timely manner. Effective controls should include segregation of duties, delegation of duties to appropriate qualified personnel, and dual approval of loan disbursements.

(g) Commercial Loan Prohibitions.

(1) Ineligible borrowers. A credit union may not grant a commercial loan to the following:

(A) any senior management employee directly or indirectly involved in the credit union’s commercial loan underwriting, servicing, and collection process, and any of their immediate family members;

(B) any person meeting the requirements of subsection (i) of this section concerning aggregations and attribution for commercial loans, with respect to persons identified in subparagraph (A) of this paragraph; or

(C) any director, unless the credit union’s board of directors approves granting the loan and the borrowing director was recused from the board’s decision making process.

(2) Equity Agreements and Joint Ventures. A credit union may not grant a commercial loan if any additional income received by the credit union or its senior management employees is tied to the profit or sale of any business or commercial endeavor that benefits from the proceeds of the loan.

(3) Fees. No director, committee member, volunteer official, or senior management

employee of a credit union, or immediate family member of such director, committee member, volunteer official, or senior management employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any commercial loan made by the credit union. Employees, other than senior management, may be partially compensated on a commission or performance based incentive, provided the compensation is governed by a written policy and internal controls established by the board of directors. The board must review the policies and controls at least annually to ensure that such compensation is not excessive or expose the credit union to inappropriate risks that could lead to material financial loss. Loan origination employees are prohibited from receiving, in connection with any commercial loan made by the credit union, any compensation from any source other than the credit union. For the purposes of this paragraph, compensation includes non-monetary items and anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest, but compensation does not include nonmonetary items of nominal value.

(h) Aggregate Member Business Loan Limit.

(1) Limits. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under 12 U.S.C. Section 1790d(c)(1)(A). For purposes of this calculation, member business loan means any commercial loan, except that the following commercial loans are not member business loans and are not counted toward the aggregate limit on member business loans:

(A) any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase the loan in full;

(B) any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the credit union acquired the non-member loans or participation interest in compliance with applicable laws and the credit union is not, in conjunction with one or more other credit unions, trading member business loans to circumvent the aggregate limit under this subsection; and

(C) any loan that is fully secured by a lien on a 1- to 4- family dwelling.

(2) Exceptions. Any loan secured by a lien on a vehicle manufactured for household use that will be used for commercial, corporate, or other business investment property or venture, and any other loan for an agricultural purpose are not commercial loans (if the outstanding aggregate net member business loan balance is \$50,000 or greater), and must be counted toward the aggregate limit on a credit union's member business loans under this subsection.

(3) Exemption. A credit union that has a federal low-income designation, or participates in the federal Community Development Financial Institution program, or was chartered for the purpose of making member business loans, or which as of the date of the Credit Union Membership Access Act of 1998 had a history of primarily making commercial loans, is exempt from compliance with the aggregate member business loan limits in paragraph (1) of this subsection.

(4) Method of Calculation for Net Member Business Loan Balance. For the purposes of NCUA form 5300 reporting (call report), a credit union's net member business loan balance is determined by calculating the sum of the outstanding loan balance plus any unfunded commitments and reducing that sum by any portion of the loan that is: secured by shares in the credit union, by shares or deposits in other financial institutions, or by a lien on a borrower's primary residence; insured or guaranteed by any agency of the federal government, a state, or any political subdivision of a state; or subject to an advance commitment to purchase by any agency of the federal government, a state, or any political subdivision of a state; or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(i) Aggregation and Attribution for Commercial Loans.

(1) General Rule. A commercial loan or extension of credit to one borrower is attributed to another person, and each person will be considered a borrower, when:

(A) the proceeds of the commercial loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, as provided by paragraph (2) of this subsection;

(B) a common enterprise is deemed to exist between the persons as persons as provided by paragraph (3) of this subsection; or

(C) the expected source of repayment for each commercial loan or extension of credit is the same for each person as provided by paragraph (3) of this subsection.

(2) Direct Benefit. The proceeds of a commercial loan or extension of credit to a borrower is considered used for the direct benefit of another person and attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred in any manner to or for the benefit of the other person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services from such other person.

(3) Common Enterprise.

(A) Description. A common enterprise is considered to exist and commercial loans to separate borrowers will be aggregated when:

(i) the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this subparagraph because of wages and salaries paid to an employee, unless the standards of clause (ii) of this subparagraph are met:

(ii) the loans or extension of credit are made:

(I) to borrowers who are related directly or indirectly through control as defined by subsection (a) of this section; and

(II) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and other similar receipts or payments;

(iii) separate persons borrow from a credit union to acquire a business of enterprise of which those borrowers will own more than fifty (50) percent of the voting securities of voting interest, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) the Department determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(B) Commercial Loans to Certain Entities. A commercial loan or extension of credit:

(i) to a partnership or joint venture is considered to be a commercial loan or extension of credit to each member of the partnership or joint venture. Excepted from this subdivision is a partner or member who: is not held generally liable, by the terms of the partnership or membership agreement or by applicable law, for the debts or actions of the partnership, joint venture, or association, provided those terms are valid against third parties under applicable law; and has not otherwise agreed to guarantee or be personally liable on the loan or extension of credit.

(ii) to a member of a partnership, joint venture, or association is generally not attributed to the partnership, joint venture, or associations, or to other members of the partnership, joint venture, or association, except as otherwise provided by paragraphs (2) and

(3) of this subsection, provided that a commercial loan or extension of credit made to a member of a partnership, joint venture or association for the purpose of purchasing an interest in the partnership, joint venture or association, is attributed to the partnership, joint venture or association.

(C) **Guarantors and Accommodation Parties.** The derivative obligation of a drawer, endorser, or guarantor of a commercial loan or extension of credit, including a contingent obligation to purchase collateral that secures a commercial loan, is aggregated with other direct commercial loans or extensions of credit to such a drawer, endorser, or guarantor.

(j) **Commercial Loans to One Borrower Limit.** The total aggregate dollar amount of commercial loans by a credit union to any borrower at one time may not exceed the greater of fifteen (15) percent of the credit union's net worth or \$100,000, plus an additional ten (10) percent of the credit union's net worth if the amount that exceeds the credit union's fifteen (15) percent general limit is fully secured at all times with a perfected security interest in readily marketable collateral. Any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the commercial loan in full, is excluded from this limit.

(k) **Finance Code Limitation.** In addition to the other limitations of this section, a credit union may not make a loan to a member or a business interest of the member if the loan would cause the aggregate amount of loans to the member and the member's business interests to exceed an amount equal to 10 percent of the credit union's total assets as provided by TEX. FIN. CODE §124.003.

(l) **Commercial Loans Regarding Federal or State Guaranteed Loan Programs.** A credit union may follow the loan requirements and limits of a guaranteed loan program for loans that are part of a loan program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the loan in full if that program has requirements that are less restrictive than those required by this section.

(m) **Transitional Provisions.**

(1) **Waivers.** Upon the effective date of this section, any waiver approved by the Department concerning a credit union's commercial lending activity is rendered moot, except for waivers granted for the commercial loan to one borrower limit. Borrowing relationships granted by waivers will be grandfathered however, the debt associated with those relationships may not be increased.

(2) **Administrative Constraints.** Limitations or other conditions imposed on a credit union in any written directive from the Department are unaffected by the adoption of this section. As of the effective date of this section, all such limitations or other conditions remain in place until such time as they are modified by the Department.

§91.710. Overdraft Protection.

(a) **Written Policy.** A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has written policies and procedures adequate to address the credit, operational, and other risks associated with this type of program. The policy must:

1. Set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses;
 2. Establish a time limit no later than 60 calendar days from the date first overdrawn to charge off the overdraft balance if the member does not repay the overdraft balance, or does not obtain an approved loan from the credit union;
 3. Limit the dollar amount of overdrafts the credit union will honor per account;
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4. Institute prudent practices related to suspension of overdraft protection services; and
 5. Establish the fee, if any, the credit union will charge members for honoring overdrafts.
- (b) **Safety and Soundness Requirements.** A credit union must manage the risks associated with an overdraft protection program in accordance with safe and sound credit union principles. Accordingly, a credit union must establish and maintain effective risk management and control processes over its program. Such processes include appropriate recognition, treatment, and financial reporting, in accordance with generally accepted accounting principles, of income, expenses, assets, liabilities, and all expected and unexpected losses associated with the program. A credit union also shall assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its overdraft protection program.
- (c) **Communications with Member.** A credit union shall carefully review its overdraft protection program to ensure that marketing and other communications concerning the program do not mislead members to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed. In addition, a credit union shall take reasonable precautions to make sure members are not misled about the correct amount of their account balance, or the costs or scope of the overdraft protection offered, and that it does not encourage irresponsible member financial behavior that potentially may increase risk to the credit union.
- (d) **Other Requirements.** A credit union shall also comply with the overdraft service requirements contained within Part 205 of the Federal Reserve System Rules and Regulations (Regulation E).

§91.711. Purchase and Sale of Member Loans.

- (a) **Policies.** A credit union may sell or purchase all or part of a participation interest in a member loan or pool of member loans in accordance with written policies adopted by the board of directors that address the following matters:
- (1) The type of entities to which the credit union is authorized to sell participation interests in member loans;
 - (2) The types of member loans in which the credit union may purchase or sell a participation interest and the types of participation interests which may be purchased or sold;
 - (3) The underwriting standards to be applied in the purchase of participation interests in member loans;
 - (4) Limitations on the aggregate principal amount of participation interest in member loans that the credit union may purchase from a single entity as necessary to diversify risk, and limitations on the aggregate amount the credit union may purchase from all entities;
 - (5) Provision for the identification and reporting of member loans in which participation interests are sold or purchased; and
 - (6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent judgment.
- (b) **Purchase and Sale Agreements.** The sale or purchase of a member loan or participation interest must be based on a written agreement between the parties. Agreements to purchase or sell a member loan or a participation interest shall, at a minimum:
- (1) Identify the particular member loan(s) to be covered by the agreement;
 - (2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;
 - (3) Provide for sharing, dividing, or assigning collateral;
 - (4) Identify the nature of the participation interest(s) sold or purchased;
 - (5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and
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(6) Contain any terms necessary for the appropriate administration of the member loan and the protection of the participation interests of the credit union.

(c) Member Loan Servicing. A credit union may sell to or purchase from any participant the servicing of any member loan in which it owns a participation interest. If a party other than the credit union will be servicing the member loan(s), the credit union shall ensure that all contracts require the servicer to administer the member loan(s) in accordance with prudent industry standards, and provide for a possible change of the servicer if performance is inadequate.

(d) Definition. For purposes of this section, a member loan means a loan or extension of credit where the borrower(s) is a member of the credit union or a member of another participating credit union.

(e) Independent Credit Judgment. A credit union that purchases a participation interest in a member loan has the responsibility of conducting member loan underwriting procedures on the member loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards. The credit union shall make a judgment on the creditworthiness of the borrower that is independent of the originating lender and any intermediary seller prior to the purchase of the participation interest and prior to any servicing action that alters the terms of the original agreement. This credit judgment may not be delegated to any person that is not an employee or independent agent of the credit union. A credit union that purchases a participation interest in a member loan may use information, such as appraisals or collateral inspections, furnished by the originating lender, or any intermediary seller; however, the purchasing credit union shall independently evaluate such information when exercising its independent credit judgment. The independent credit judgment shall be documented by a credit analysis that considers the underwriting, documentation, and compliance standards that would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer.

(f) Other Requirements. A credit union purchasing a participation interest in a member loan from a lender that is not a credit union insured by the National Credit Union Share Insurance Fund, must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

(g) Sales with Recourse. When a member loan or participation interest is sold with recourse, it shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s).

§91.712. Plastic Cards.

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

(1) Card Activation – process of sending new plastic cards from the issuer to the legitimate cardholder in an “inactive” mode and making the card usable. Upon receiving the card, the legitimate cardholder must call or log on to the issuer/processor's website and go through a member verification process before the card is “activated”.

(2) Card Security Code – a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.

(3) Neural Network – a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity.

(4) Plastic Cards – includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.

(b) Credit cards. A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:

- (1) Credit policies to set individual limits for credit card accounts;
- (2) A process for reviewing each member's payment and/or credit history periodically for the purpose of determining risk; and
- (3) The credit underwriting standards for each type of card program offered.

(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

- (A) The amount of losses caused by theft and fraud;
- (B) The loss prevention measures (and their adequacy) currently employed by the credit union;
- (C) The availability and possible implementation of other loss prevention measures such as card activation, card security codes, neural networks, and other evolving technology; and
- (D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

(2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

§91.713. Indirect Lending.

(a) Indirect Lending Program. Credit unions may implement a program of indirect financing of motor vehicles and other tangible personal property. As used in this chapter, an indirect financing is the credit union's purchase of a member's retail installment contract that is originated by a seller to finance the purchase of the motor vehicle or other property.

(b) Contracts Treated as a Loan. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting decision. The seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, but the final determination of membership eligibility is the credit union's responsibility.

(c) Authorization. Credit unions may purchase or hold retail installment contracts when authorized by applicable law. The retail installment contract must provide for a rate or amount of time price differential that does not exceed a rate or amount authorized by applicable law.

(d) Written Policies. The board of directors shall establish, implement, and maintain prudent and reasonable written policies that are appropriate for the size and complexity of the credit union's indirect lending program. The board must also ensure that the credit union has sufficient staff with the expertise to purchase, service, and monitor the program and the contract portfolio consistent with safe and sound credit union practices. The policies must be specific and detailed enough to foster prudent and compliant credit practices.

(e) Third Party Providers. A credit union may rely on services provided by third parties to support its indirect lending activities. The board of directors must ensure that the credit union exercises appropriate due diligence before entering into third party arrangements, and maintains effective oversight and control throughout the arrangement. This oversight and control should include a periodic review of each material seller's retail installment contract statistics to ensure compliance with credit union credit criteria and to avoid undue concentrations of risk.

(f) Subprime Indirect Lending. If a credit union conducts a program that includes subprime indirect lending, it must perform comprehensive due diligence before engaging in and during that

type of activity. At a minimum, due diligence shall focus on understanding the higher levels of credit, compliance, reputation, and other risks involved, plus the likelihood that origination, servicing, collections, operating, and capital costs will increase. The strategic decision to engage in subprime indirect lending must also be supported by a sound business plan that establishes measurable financial objectives as well as limitations on growth, volume, and concentrations. For the purposes of this section, "subprime indirect lending" refers to programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios.

§91.714. Leasing.

(a) Definitions. For the purposes of this section:

(1) The term net lease means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for:

(A) the servicing, repair or maintenance of leased property during the lease term;

(B) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of subsection (c)(2)(A) of this section;

(C) the loan of replacement or substitute property while the leased property is being serviced;

(D) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) the renewal of any license, registration, or filing for the property unless such action by the credit union is necessary to protect its interest as an owner or financier of the property.

(2) The term full-payout lease means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the credit union to yield the return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term realization of investment means that a credit union that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals; and

(B) The estimated residual value of the property at the expiration of the term of the lease.

(b) Permissible Activities. Subject to the limitations of this section, a credit union may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) Finance Leasing.

(1) A credit union may conduct leasing activities that are functional equivalent of loans made under those leases. Such financing leases are subject to the same restrictions that would be applicable to a loan.

(2) To qualify as the functional equivalent of a loan:

(A) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(B) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(C) At the termination of the financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or the value carried on the credit union's books.

(d) General Leasing. A credit union may invest in tangible personal property, including vehicles, manufactured homes, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) Leasing Salvage Powers. If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (1) and (2) of this subsection.

(f) Written Policies. A credit union engaged in lease underwriting must adopt written policies and develop procedures that reflect lease practices that control risk and comply with applicable laws. Any leasing activity must be consistent with the lending policies and underwriting requirements in §91.701 of this title (relating to Lending Powers). Any credit union engaged in making or buying leases also must adopt written policies and procedures that address the additional risks associated with leasing.

(g) Insurance Requirements. A credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if the credit union does not own the leased property. Contingent liability insurance protects the credit union if it is sued as the owner of the leased property. A credit union must use an insurance company with a nationally recognized industry rating of at least a B+. Credit union members must still carry the normal liability and property insurance on the leased property and the credit union must be named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.

(h) Holding Period. At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a credit union shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. The credit union must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

§91.715. Exceptions to the General Lending Policies.

- (a) Credit unions may provide for the consideration of loan requests from creditworthy members whose credit needs do not fit within the credit union's general lending policies. A credit union may provide for prudently underwritten exceptions to its lending policies. However, the Board is responsible for establishing written standards for the review and approval of exception loans.
- (b) Each credit union establishing exceptions to its general lending policies shall establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan shall also be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans will be maintained as a part of the permanent loan file. Each credit union shall monitor compliance with its lending policies and individually report exception loans of a significant size to its board of directors.
- (c) Exception loans shall be identified in the credit union's records and their aggregate amount reported at least annually to the board of directors. The aggregate amount of all such loans shall not exceed 10 percent of the credit union's net worth.

§91.716. Prohibited Fees.

A credit union shall not make any loan or extend any credit if, either directly or indirectly, any commission, fee, or other compensation from any person or entity other than the credit union is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or extension of credit.

§91.717. More Stringent Restrictions.

The Commissioner may impose more stringent restrictions on a credit union's loans if the Commissioner determines that such restrictions are necessary to protect the safety and soundness of the credit union.

91.718. Charging Off or Setting Up Reserves.

- (a) The commissioner, after a determination of value in accordance with generally accepted accounting principles, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established.
 - (b) A credit union's financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.
 - (c) The Board of directors is responsible for ensuring that the credit union has controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with its written policies, generally accepted accounting principles, and relevant supervisory guidance. Policies shall be appropriately tailored to the size and complexity of the credit union and its loan and lease portfolio. As a minimum, a credit union shall develop, maintain, and document the methodology used to determine the amounts of an appropriate ALLL and provisions for loan and
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lease losses. Adjustments to the ALLL shall be made prior to the end of each calendar quarter in order to accurately reflect the loss exposure on the quarterly call reports.

§91.719. Loans to Officials and Senior Management Employees.

(a) Prohibition on Preferential Rates, Terms, and Conditions. The rates, terms, conditions, and availability of any loan or other extension of credit made to, or endorsed or guaranteed by, a director, senior management employee, member of the credit committee, or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) Approval of Governing Board. Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, senior management employee, member of the credit committee, or an immediate family member of such individual, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and the members of the person's immediate family is greater than 15% of the credit union's net worth. A loan fully secured by shares in the credit union or deposits in other financial institutions shall not be subject to, or included in, the aggregate amounts included in this section.

(c) Definition. For purposes of this section, senior management employees shall include the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above), and the chief financial officer; and immediate family members shall include a person's spouse or any other person living in the same household.

(d) Aggregate Limit on Insider Loans. The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by, all directors, credit committee members, senior management employees, and immediate family members of all such individuals, shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) Reports to Governing Board. At least annually, the president shall make a report to the board of directors on the outstanding indebtedness of all directors, credit committee members, senior management employees, and immediate family members of such individuals. The Board's review shall be included as part of the minutes of the meeting at which the report was presented. The report required by this section shall include the following information:

- (1) The amount of each indebtedness; and
- (2) A description of the terms and conditions (including the interest rate, the original amount and date, maturity date, payment terms, security, if any, and any other unusual term or condition) of each extension of credit.

(f) Governing Board Option. At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived for any individual if the aggregate amount of all outstanding loans and extensions of credit to that person, the person's business interests, and the members of the person's immediate family do not exceed the greater of \$25,000 or one-quarter of one percent (.25%) of the credit union's net worth.

SMALL-DOLLAR, SHORT-TERM CREDIT

K. (2) Proposed Amendments to 7 TAC, Part 8, Chapter 91.720 (Small-Dollar, Short-Term Credit).

BACKGROUND: The purpose of the proposed amendments is to adjust for inflation the maximum lending limit related to these loan products and to foster competitive authority to similar products allowed federal credit unions. The \$1,100 limit found within paragraph (b) was established in 2010 and has not been adjusted since that time. Increasing the defined limit on these types of loans will increase the availability of credit to consumers utilizing these loan products and provide additional time to repay. Finally, the maximum lending limit and maturity found within the current rule is less than maximum maturities of similar loan products authorized by federal credit unions under the Payday Alternative Loans programs authorized by NCUA Rules and Regulations 12 CFR Part 701. The proposed changes would match federal credit union authority relating to maturity and lending limits of these loan products.

The proposed amendments to paragraph (b) increases the defined maximum for small-dollar, short-term credit loans to \$2,000 and extended maximum maturity to 12 months

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

RECOMMENDED MOTION: I move that the Commission approve for publication and comment the proposed rule 7 TAC Section 91.720 concerning Small-Dollar, Short-Term Credit.

TITLE 7.	BANKING AND SECURITIES
Part 6.	Credit Union Department
Chapter 91.	Chartering, Operations, Mergers, Liquidations
Subchapter G.	Lending Powers
Rule §91.720.	Small-Dollar, Short-Term Credit

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, Section 91.720 concerning Small-Dollar, Short-Term Credit.

The purpose of the proposed amendments is to adjust for inflation the maximum lending limit related to these loan products and to foster competitive authority to similar products allowed federal credit unions. The \$1,100 limit found within paragraph (b) was established in 2010 and has not been adjusted since that time. Increasing the defined limit on these types of loans will increase the availability of credit to consumers utilizing these loan products and provide additional time to repay. Finally, the maximum lending limit and maturity found within the current rule is less than maximum maturities of similar loan products authorized by federal credit unions under the Payday Alternative Loans programs authorized by NCUA Rules and Regulations 12 CFR Part 701. The proposed changes would match federal credit union authority relating to maturity and lending limits of these loan products.

The proposed amendments to paragraph (b) increases the defined maximum for small-dollar, short-term credit loans to \$2,000 and extended maximum maturity to 12 months.

STATE AND LOCAL GOVERNMENTS

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

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Kolhoff has also determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the proposed amendment because they will have greater access to credit when enjoining these types of loans. There will be no anticipated cost to persons who are required to comply with the proposed amendments.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

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

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; create new regulations; limit, or repeal an existing regulation; increase fees paid to the department; increase or decrease the number of individuals subject to the rule's applicability; or adversely affect this state's economy.

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

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

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

§91.720. Small-Dollar, Short-Term Credit.

(a) General. Credit unions are encouraged to offer small-dollar credit products that are affordable, yet safe and sound, and consistent with applicable laws. The goal in offering these small-dollar credit products should be to help members avoid, or transition away from, reliance on high-cost debt. To accomplish this goal, credit unions should offer products with reasonable interest rates, low fees, and payments that reduce the principal balance of the loan or extension of credit.

(b) Definition. For purposes of this section, small-dollar, short term credit product is defined as a low denomination loan or extension of credit having a term of **12 [6]** months or less, where the amount financed does not exceed **\$2,000 [\$1,100]**. Each credit union is responsible for establishing appropriate dollar limits and terms based upon its size and sophistication of operations, and its net worth.

(c) Limitation. Accessibility and expediency are important factors for many members with emergency or other short-term needs. Therefore, small-dollar credit products must balance the need for quick availability of funds with the fundamentals of responsible lending. Sound underwriting criteria should focus on a member's history with the credit union and ability to repay a loan within an acceptable timeframe. Given the small dollar amounts of each individual credit request, documenting the member's ability to repay can be streamlined and may need to include only basic information, such as proof of recurring income. The aggregate total of streamlined underwritten small-dollar credit products outstanding, however, shall not exceed 20% of the credit union's net worth.

(d) Fees. A credit union may require a member to pay reasonable expenses and fees incurred in connection with making or closing a loan. With respect to expenses and fees being assessed on small-dollar, short-term credit products, the expenses and fees are presumed to be reasonable if the aggregate total is \$20 or less. In addition, if the credit union refinances a small-dollar, short-term credit product,

it may charge such expenses and fees only once in a 180-day period. Credit unions may also charge a late fee as permitted by Finance Code §124.153.

(e) Payments. Credit unions should structure payment programs in a manner that reduces the principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments. Lines of credit should require minimum payments that pay off principal. Excessive renewals or the prolonged failure to reduce the outstanding balance are signs that the product is not meeting the member's credit needs and will be considered an unsound practice.

(f) Required Savings. Credit unions may structure small-dollar credit programs to include a savings component. The funds in this account may also serve as a pledge against the loan or extension of credit.

HOME EQUITY LENDING

K. (3) Proposed Amendments to 7 TAC, Part 8, Chapter 153. (Home Equity Lending).

BACKGROUND: The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department.

7 TAC Chapter 153 contains the Texas Finance and Credit Union Commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: to amend the definition of "business day" and to make technical corrections.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Commission approve the amendments for publication and comments.

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

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

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.1 (relating to Definitions) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to amend the definition of "business day" to ensure that the definition appropriately excludes legal public holidays, reflects the common understanding of "business day" in the context of mortgage loan disclosures, and is consistent with similar definitions under federal law, and (2) to make technical corrections to ensure consistency in the text of other definitions.

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

Proposed amendments to §153.1(2) would amend the definition of "business day." The term "business day" is used in Section 50(a)(6)(M)(ii) and Section 50(f)(2)(D). Under Section 50(a)(6)(M)(ii), the lender must provide a preclosing disclosure to the owner at least one business day before the closing of a home equity loan. Under Section 50(f)(2)(D), when a lender refinances a home equity loan into a non-home-equity loan, the lender must provide a refinance disclosure within three business days after the homeowner submits a loan application.

The proposal would amend §153.1(2) to contain three definitions of "business day." First, for purposes of 7 TAC §153.13 (relating Preclosing Disclosures: Section 50(a)(6)(M)(ii)), the proposal would state that a business day is a calendar day except for Sunday or a legal public holiday described by federal law. This is similar to the current definition of "business day" in §153.1(2), but adds Juneteenth National Independence Day as a listed holiday. In 2021, federal law was amended to add Juneteenth as a legal public holiday. Juneteenth National Independence Day Act, Pub. L. No. 117-17, 135 Stat. 287 (2021) (codified at 5 U.S.C. §6103(a)). The proposal also adds a reference to the federal law listing legal public holidays at 5 U.S.C. §6103(a) (in case this section is amended to describe additional holidays in the future). Second, for purposes of 7 TAC §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), the proposal would amend §153.1(2) to state that a business day is a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. Third, for purposes of 7 TAC

§153.25 (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the proposal would state that a business day has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

These definitions are based on the definitions of "business day" that currently apply to mortgage disclosures under federal law, as well as regulatory commentary on those definitions. Federal Regulation Z, 12 C.F.R. part 1026, requires a lender to provide several disclosures to a borrower in connection with a mortgage loan. The two definitions of "business day" are listed in Regulation Z, 12 C.F.R. §1026.2(a)(6). One of these definitions provides that a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. The other definition provides that a business day is any calendar day except Sundays and legal public holidays listed in federal law. In its official commentary to Regulation Z, the Consumer Financial Protection Bureau (CFPB) refers to these two definitions as the "business function test" and the "more precise rule," respectively. Official Interpretations of Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6). Each definition applies to a different set of deadlines and timing requirements under Regulation Z. For example, the business function test applies for purposes of the requirement to provide an early disclosure within three business days after a creditor receives the consumer's application (as provided by 12 C.F.R. §1026.18(e)(1)(iii)(A)). The more precise rule applies for purposes of the requirement to provide final disclosures at least three days before closing (as provided by 12 C.F.R. §1026.18(f)(1)(ii)(A)), as well as the consumer's right to rescind certain mortgage loans within three business days after

consummation (as provided by 12 C.F.R. §1026.23(a)(2)). The CFPB analyzed how these definitions apply to Juneteenth in an interpretive rule issued in August 2021. Consumer Financial Protection Bureau, Impact of the 2021 Juneteenth Holiday on Certain Closed-End Mortgage Requirements, 86 Fed. Reg. 44,267 (2021).

The changes to the definition of "business day" respond to an informal comment that the agencies received from an industry attorney in August 2021. This attorney recommended adding a reference to Juneteenth in §153.1(2), and recommended consistency with Regulation Z's definitions of "business day."

During the online webinar on the precomment draft of the amendments, a second industry attorney expressed general support for the amendments, agreeing that the amendments reflected her members' understanding of what a business day is. This attorney requested additional clarity regarding observed holidays (such as holidays observed on the Monday following a holiday). In response to this verbal comment, the proposed amendment at §153.1(2)(A) includes guidance on observed holidays, based on the CFPB's commentary to Regulation Z, 12 C.F.R. pt. 1026, supp. I, para. 2(a)(6)1.

A third industry attorney (who works for a company that prepares closing documents for Texas mortgage lenders) submitted a written precomment expressing general support for the amendments. This attorney stated: "We believe the proposed amendments are a positive step in aligning the Texas and federal business day definitions. . . . We believe the draft amendments are appropriate and consistent with the Texas Constitution. In the context of

mortgage loan disclosures, the term 'business day' has multiple meanings that are set out in Regulation Z. The term obviously has differing meanings depending on the context and type of disclosure" The attorney explained that the proposed amendments would lead to fewer mistakes that may result from lenders manually providing Texas disclosures that do not align with their automated loan origination systems. The attorney also recommended replacing the list of holidays in §153.1(2)(A) with a single reference to federal law. The agencies considered this approach, but believe that the list of holidays helps the reader quickly understand the definition without having to refer to a separate legal source. The commissions invite further comment on this issue during the comment period on this proposal.

Based on these comments from stakeholders, the agencies believe that the proposed definitions reflect the common understanding of the term "business day" in the context of disclosures for mortgage loans. The proposed definitions would also have practical benefits. For example, by aligning the definition in §153.1(2) with Regulation Z, the proposal would allow a lender to send the constitutionally required refinance disclosure on the same date it sends the federally required early disclosure. Also, the proposal would allow a lender additional time to provide the refinance disclosure if its offices are closed for business functions due to an emergency (such as a pandemic or storm).

Other changes throughout §153.1 would make technical corrections to ensure consistency of formatting and capitalization. The changes to capitalization are based on feedback from staff of the *Texas Register*.

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

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions' rules will better reflect the common understanding of the term "business day" in the mortgage lending context, will better align with deadlines for federal disclosures, and will provide clearer guidance to ensure that lenders comply with Section 50.

The agencies do not anticipate any economic cost to persons who are required to comply with the amendments as proposed.

The agencies do not anticipate any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agencies invite comments from

interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

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

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further

written comments will be considered or accepted by the commissions.

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

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

Chapter 153. Home Equity Lending

§153.1. Definitions

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

(1) Balloon--An [an] installment that is more than an amount equal to twice the average of all installments scheduled before that installment.

(2) Business day [~~Day~~ ~~All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day~~].

(A) As used in Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), "business day" means all

calendar days except Sundays and the following legal public holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other legal public holiday specified in 5 U.S.C. § 6103(a). When a holiday falls on a Saturday or Sunday, entities might observe the holiday on the preceding Friday or following Monday (e.g., when July 4 falls on a Saturday, entities might observe the holiday on Friday, July 3). For purposes of this subparagraph, these observed holidays (in the example, July 3) are business days.

(B) As used in Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f)), "business day" means a day on which the lender's offices are open to the public for carrying on substantially all of its business functions. Activities that indicate that the lender is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle loan inquiries. Activities that indicate that the lender is not open for substantially all of its business functions include a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

(C) As used in §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), "business day" has the meaning provided by Regulation Z, 12 C.F.R. §1026.2(a)(6) that applies for purposes of rescission.

(3) Closed or closing--The [the] date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

(4) Consumer disclosure--The [Diselosure--the] written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

(5) Cross-default provision--A [a] provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

(6) Date the extension of credit is made--The [the] date on which the closing of the equity loan occurs.

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

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

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

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

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

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

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

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

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

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

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

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 18, 2022, and March 11, 2022.

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

L

LITIGATION UPDATE REGARDING PENDING LITIGATION

L. Litigation Update Regarding Pending Litigation,
Credit Union Department v. Ken Paxton, Attorney General of
Texas, Cause No. D-1-GN-21-007168.

BACKGROUND: On December 10, 2021, in Travis County District Court, Cause No. D-1-GN-21-007168, the Department filed suit against the Attorney General of Texas challenging Letter Ruling OR2021-31535 (Letter Ruling) asking the Court to rule that the information at issue in the Letter Ruling is not subject to disclosure under the Texas Public Information Act (PIA). In the lawsuit, the Department asserts the information requested and at issue is excepted from disclosure under section 552.101 of the Texas Government Code in conjunction with sections 126.002 and 125.054 of the Texas Finance Code; and moreover, the information should be confidential because it affects the privacy and property rights of West Texas Credit Union. On January 20, 2022, West Texas Credit Union filed a Petition in Intervention to the underlying suit, and on January 21, 2022, the Office of the Attorney General filed its Original Answer. Subsequent to these filings, on February 23, 2022, counsels for all Parties entered into a Rule 11 Agreement regarding Initial Disclosures, agreeing that no initial disclosures are due in this case until the Parties agree on a future deadline.

RECOMMENDED ACTION: No formal action is anticipated.

**ANY ADDITIONAL MATERIAL WILL BE SUPPLIED
AT THE MEETING**

M

FUTURE COMMISSION MEETING

M. Next Commission Meeting – The next regular meeting of the Commission has been tentatively scheduled for June 10, 2022.

ADJOURNMENT

CREDIT UNION DEPARTMENT

INDUSTRY STATUS

AND

DEPARTMENTAL OPERATION

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex

Race	Sex	Annual Salary	Tenure	
ASIAN				
	Summary for M (3 detail records)	\$ 84,804	11.18	Avg
	Summary for 'Race' = ASIAN (3 detail records)	\$ 84,804	11.18	Avg
BLACK				
	Summary for F (6 detail records)	\$ 88,030	6.86	Avg
	Summary for M (1 detail record)	\$ 90,153	7.90	Avg
	Summary for 'Race' = BLACK (7 detail records)	\$ 88,333	7.01	Avg
HISPA				
	Summary for F (5 detail records)	\$ 63,887	11.81	Avg
	Summary for M (1 detail record)	\$ 111,474	5.05	Avg
	Summary for 'Race' = HISPA (6 detail records)	\$ 71,818	10.69	Avg
MULTI				
	Summary for F (1 detail record)	\$ 43,989	2.82	Avg
	Summary for 'Race' = MULTI (1 detail record)	\$ 43,989	2.82	Avg
WHITE				
	Summary for F (1 detail record)	\$ 112,000	0.41	Avg
	Summary for M (11 detail records)	\$ 95,413	8.90	Avg
	Summary for 'Race' = WHITE (12 detail records)	\$ 96,795	8.19	Avg
TOTALS				
	29	\$ 86,523	8.55	Avg

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex (ADMIN)

Race	Sex	Annual Salary	Tenure	
HISPA				
	Summary for F (3 detail records)	\$ 57,458	15.66	Avg
	Summary for M (1 detail record)	\$ 111,474	5.05	Avg
	Summary for 'Race' = HISPA (4 detail records)	\$ 70,962	13.01	Avg

MULTI				
	Summary for F (1 detail record)	\$ 43,989	2.82	Avg
	Summary for 'Race' = MULTI (1 detail record)	\$ 43,989	2.82	Avg

WHITE				
	Summary for F (1 detail record)	\$ 112,000	0.41	Avg
	Summary for M (5 detail records)	\$ 129,644	11.17	Avg
	Summary for 'Race' = WHITE (6 detail records)	\$ 126,704	9.38	Avg

TOTALS				
	11	\$ 98,914	10.10	Avg

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex (FIELD STAFF)

Race	Sex	Annual Salary	Tenure	
ASIAN				
	Summary for M (3 detail records)	\$ 84,804	11.18	Avg
	Summary for 'Race' = ASIAN (3 detail records)	\$ 84,804	11.18	Avg
BLACK				
	Summary for F (6 detail records)	\$ 88,030	6.86	Avg
	Summary for M (1 detail record)	\$ 90,153	7.90	Avg
	Summary for 'Race' = BLACK (7 detail records)	\$ 88,333	7.01	Avg
HISPA				
	Summary for F (2 detail records)	\$ 73,530	6.05	Avg
	Summary for 'Race' = HISPA (2 detail records)	\$ 73,530	6.05	Avg
WHITE				
	Summary for M (6 detail records)	\$ 66,886	7.01	Avg
	Summary for 'Race' = WHITE (6 detail records)	\$ 66,886	7.01	Avg
TOTALS				
	18	\$ 78,951	7.60	Avg

Credit Union Department

Executive Summary

As of 11/30/21

*Information from call report cycle

ACTIVITY	YTD 2020	YTD 2021	2022 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MOVEMENT PROFILE							
Number of CUs	177	175	175				
Total Assets (Millions)	*48,620	*54,218	*55,205				
APPLICATIONS (Received)							
Charters	0	0	0				0
Foreign Branches	1	2	0				0
Conversions	0	0	2				2
Mergers	6	3	2				2
Bylaws	77	97	15				15
Articles of Incorporation	6	1	0				0
Total	90	103	19	0	0	0	19
EXAMINATION ACTIVITIES							
Regular	113	80	26				26
Joint	49	64	14				14
Remedial	30	26	9				9
Total	192	170	49	0	0	0	49
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	2	0	0				
LUAs	0	0	0				
Cease & Desist Orders	1	3	3				
Dividend Restrictions	0	0	0				
Conservatorships	0	1	1				
Liquidations	1	1	1				
Total	4	5	5	0	0	0	
PERSONNEL STAFFING							
Field Examiners	18	17	16				
Total Personnel	29	28	27				
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	4,446	4,256	1,238				1,238
Actual Expenditures	3,898	3,588	959				959
Gifts and Bequests	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Actual Revenue	4,363	3,982	2,683				2,683

Note: FY22 Budgeted Expenditures for quarters 1-4 was reduced due to transfer of \$51,250 requested by Sunset to Contingency Fund.

Credit Union Department
Application Activities - Detail

ACTIVITY	4th Qtr 2020	4th Qtr 2021	2022 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
CHARTERS							
Pending at Beginning of Period	0	0	0				
Add: New Applications Filed	0	0	0				
Less: Approved	0	0	0				
Denied/Withdrawn	0	0	0				
Pending at End of Period	0	0	0	0	0	0	
FOREIGN BRANCH OFFICES							
Pending at Beginning of Period	0	0	1				
Add: New Applications Filed	1	1	1				
Less: Approved	0	0	0				
Denied/Withdrawn	0	0	0				
Pending at End of Period	1	1	2	0	0	0	
CONVERSIONS							
Pending at Beginning of Period	0	0	0				
Add: Applications Filed	0	0	2				
Less: Approved	0	0	0				
Denied/Withdrawn	0	0	0				
Pending at End of Period	0	0	2	0	0	0	
MERGERS							
Pending at Beginning of Period	5	2	3				
Add: Applications Filed	1	1	2				
Less: Approved	0	0	2				
Denied/Withdrawn	4	0	0				
Pending at End of Period	2	3	3	0	0	0	
BYLAWS							
Pending at Beginning of Period	6	6	12				
Add: Applications Filed	21	21	15				
Less: Approved	14	14	21				
Denied/Withdrawn	1	1	0				
Pending at End of Period	12	12	6	0	0	0	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	0	0	0				
Add: Applications Filed	1	0	0				
Less: Approved	0	0	0				
Denied/Withdrawn	0	0	0				
Pending at End of Period	1	0	0	0	0	0	

Credit Union Department
Movement Profile - Condition Summary

CAMEL RATING	4th Qtr 2020	4th Qtr 2021	2022 FISCAL YEAR				
			*1st Qtr	*2nd Qtr	*3rd Qtr	*4th Qtr	
1	55	44	44				
2	101	111	107				
3	18	17	20				
4	3	1	2				
5	0	2	2				
Total	177	175	175	0	0	0	

* Information from exam master list

Texas Credit Union Department
Enforcement Actions - Detail

TYPE OF ACTION	In Force 8/31/2020	Issued	Activity Terminated	In Force 8/31/2021	Issued	Activity Terminated	In Force 11/30/2021
Determination Letters	2	0	2	0	0	0	0
LUAs	0	0	0	0	0	0	0
Cease & Desist Orders	1	3	1	3	0	0	3
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	0	1	0	1	0	0	1
Liquidations	1	0	0	1	0	0	1
Total	4	4	3	5	0	0	5

Texas Credit Union Department
Examination Activities
Analysis of Current Year

TYPE OF EXAM	Budgeted Number	Actual Number	% Budget	% of Total	% Mailed Within 25 Days
Regular	20	26	130%	15%	100%
Joint	13	14	108%	8%	100%
Remedial	7	9	129%	5%	100%
Total	40	49	123%	31%	100%

Credit Union Department
Movement Profile - Consumer Complaints

CONSUMER COMPLAINTS	YTD 2020	YTD 2021	2022 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
Received	350	320	68				68
Closed	344	323	60				60
Avg. Days to Process	16.75	15.25	14				14
% Resolved in 30 Days	97%	99%	98%				98%

Texas Credit Union Department
Consumer Complaint - Detail

TYPES OF COMPLAINTS	YTD 2020	YTD 2021	2022 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
LOAN ISSUES							
Collections/Loans	15	15	8				8
Denial	0	0					0
Loan Issues	11	1					0
Credit Report Issues	46	54	11				11
Insurance - CPI, GAAP, Property, etc	1	6	1				1
ACCOUNT ISSUES							
Discrimination	2	3					0
Electronic Funds Transfer	21	22	2				2
Holds on Checks	12	14	2				2
Estate/Probate	0	0					0
Fraud/Unauthorized	38	54	12				12
Fees	25	22	5				5
Billing Disputes	15	31	6				6
Other	57	26	1				1
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	32	10	3				3
Account Closed/Frozen	11	20	1				1
Customer Service	40	38	6				6
Deceptive Advertisment	4	0					0
Vehicle Title	5	7	2				2
Website Issues	9	0					0
TOTAL	344	323	60	0	0	0	60

Credit Union Department
Merger/Conversion Finalized

ACTIVITY	YTD 2020	YTD 2021	2022 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MERGERS							
Number:							
State-to-State	1	0	1				1
Federal-to-State	4	2	1				1
State-to-Federal	2	0					0
Total	7	2	2	0	0	0	2
Assets:							
State-to-State	18,596,591	-	5,241,323				5,241,323
Federal-to-State	2,352,989	136,790,044	508,975,848				508,975,848
State-to-Federal	-	-					0
Total	20,949,580	136,790,044	514,217,171	0	0	0	514,217,171
CONVERSIONS							
Number:							
Federal-to-State	0	0	1	0	0	0	1
State-to-Federal	0	0	1	0	0	0	1
State-to-Mutual Bank	0	0	0	0	0	0	0
Assets:							0
Federal-to-State		-	1,010,685,008				1,010,685,008
State-to-Federal			3,541,622,858				3,541,622,858
State-to-Mutual Bank						0	
Total	-	-	4,552,307,866	0	0	0	4,552,307,866

**Credit Union Department
Web Site Statistics
Report Range: 09/01/2021 thru 11/30/2021**

		Number
Total Visits:		
	Number of Visits	4,732
	Visitors	3,362
	Page Views	9,589
	Number of Repeat Visitors	1,638
	Average Pages per Visit	2.03
	Average Visit Duration	0:01:52
	New Visitors	65.38%
Most Requested Pages:		
	Home	2,995
	Texas Rules for Credit Unions	847
	Job Postings	495
	Employment	301
	Contact Us	299
Most Downloaded Files:		
	Rules for Credit Unions	467
	Job Position	193
	Finance Code - Unofficial Compilation	90
	Complaint Form	89
	List of Texas State-Chartered Credit Unions	80

CONSOLIDATED REPORT FOR
 469 CREDIT UNION DEPARTMENT

18-Nov-2021

PROCUREMENT CATEGORY	TOTAL EXPENDITURES	TOTAL \$/% SPENT WITH NON HUBS	TOTAL \$/% SPENT WITH HUBS	ANNUAL PROCUREMENT GOAL %
HEAVY CONSTRUCTION	\$00	\$00 / 0.00%	\$00 / 0.00%	11.20%
BUILDING	\$00	\$00 / 0.00%	\$00 / 0.00%	21.10%
SPECIAL TRADE	\$980	\$980 / 100.00%	\$00 / 0.00%	32.90%
PROFESSIONAL	\$00	\$00 / 0.00%	\$00 / 0.00%	23.70%
OTHER SERVICES	\$114,232	\$35,530 / 31.10%	\$78,702 / 68.90%	26.00%
COMMODITY PURCHASING	\$56,813	\$8,701 / 15.32%	\$48,112 / 84.68%	21.10%
	<u>\$172,026</u>	<u>\$45,211 / 26.28%</u>	<u>\$126,814 / 73.72%</u>	

 CONSOLIDATED REPORT FOR
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HEAVY CONSTRUCTION	\$8,262,889,980	\$8,107,695,434 / 98.12%	\$444,964,253 / 5.39%	11.20%
BUILDING	\$2,206,929,467	\$2,099,636,196 / 95.14%	\$401,274,305 / 18.18%	21.10%
SPECIAL TRADE	\$830,222,251	\$707,170,898 / 85.18%	\$180,680,794 / 21.76%	32.90%
PROFESSIONAL	\$1,446,151,287	\$1,259,831,062 / 87.12%	\$660,551,306 / 45.68%	23.70%
OTHER SERVICES	\$12,197,837,656	\$11,427,257,484 / 93.68%	\$951,984,555 / 7.80%	26.00%
COMMODITY PURCHASING	\$6,398,183,150	\$5,773,684,948 / 90.24%	\$645,672,485 / 10.09%	21.10%
	<u>\$31,342,213,792</u>	<u>\$29,375,276,025 / 93.72%</u>	<u>\$3,285,127,701 / 10.48%</u>	

 ** ANALYSIS OF AWARDS FOR
 469 CREDIT UNION DEPARTMENT

CERTIFIED HUB GROUP FOR HUB CREDIT	TOTAL # AND % OF HUB VIDS RECEIVING AWARDS	TOTAL DOLLAR AMOUNT AND % AWARDED TO HUBS
ASIAN PACIFIC	1 / 7.14%	\$7,987 / 6.30%
BLACK	1 / 7.14%	\$1,443 / 1.14%
HISPANIC	3 / 21.43%	\$5,550 / 4.38%
NATIVE AMERICAN	1 / 7.14%	\$1,923 / 1.52%
SERVICE-DISABLED VETERAN	0 / 0.00%	\$00 / 0.00%
WOMAN	8 / 57.14%	\$109,909 / 86.67%
TOTAL	<u>14 / 100.00%</u>	<u>\$126,814 / 100.00%</u>

 ** ANALYSIS OF AWARDS FOR
 THE STATE OF TEXAS

CERTIFIED HUB GROUP	# OF VIDS ELIGIBLE FOR HUB CREDIT, %	# OF MALES, %	# OF FEMALES, %	TOTAL # AND % OF HUB VIDS RECEIVING AWARDS	TOTAL DOLLAR AMOUNT AND % AWARDED TO HUBS
ASIAN PACIFIC	1358 / 8.28%	881 / 12.24%	477 / 5.19%	286 / 7.59%	\$401,897,189 / 12.23%
BLACK	4188 / 25.54%	2320 / 32.24%	1868 / 20.32%	443 / 11.76%	\$301,142,287 / 9.17%
HISPANIC	5139 / 31.34%	3522 / 48.95%	1617 / 17.59%	1219 / 32.35%	\$1,194,883,719 / 36.37%
NATIVE AMERICAN	293 / 1.79%	208 / 2.89%	85 / 0.92%	67 / 1.78%	\$67,792,747 / 2.06%
SERVICE-DISABLED VETERAN	263 / 1.60%	263 / 3.66%	0 / 0.00%	64 / 1.70%	\$23,012,992 / 0.70%
WOMEN	5149 / 31.41%	1 / 0.01%	5148 / 55.99%	1688 / 44.80%	\$1,296,349,069 / 39.46%
TOTAL	<u>16395 / 100.00%</u>	<u>7195 / 100.00%</u>	<u>9195 / 100.00%</u>	<u>3768 / 100.00%</u>	<u>\$3,285,078,005 / 100.00%</u>

** THE ANALYSIS IS BASED ON THE TOTAL # OF VENDOR ID NUMBERS THAT WERE ELIGIBLE TO RECEIVE HUB CREDIT.
 TOTAL # OF CERTIFIED HUBS FOR THE PERIOD OF FY2021 IS 16373.

SUCH AS, 1358 (8.28%) OF VID NUMBERS ELIGIBLE TO RECEIVE HUB CREDIT WERE ASIAN PACIFIC OWNED BUSINESSES, 881 (12.24%) WERE ASIAN PACIFIC MALE OWNED BUSINESSES AND 477 (5.19%) WERE ASIAN PACIFIC FEMALE OWNED BUSINESSES. 286 (7.59%) AWARDS WERE MADE TO ASIAN PACIFIC OWNED BUSINESSES, TOTALING \$401,897,189.00 (12.23%) OF THE TOTAL DOLLARS AWARDED TO HUBS.