

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 statement 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; 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 in 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 **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 the 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

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