



CREDIT UNION COMMISSION MEETING

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

**September 16, 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, September 16, 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 September 30, 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

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

Legal Counsel

- ***Nancy S. Elmilady***

Staff

- ***Robert W. Etheridge***
- ***Joel R. Arevalo***
- ***Isabel Velasquez***

FUTURE CREDIT UNION COMMISSION MEETING DATES

Friday, November 4, 2022

Friday, March 10, 2023

Friday, June 2, 2023

All regular scheduled meetings will begin at 9:00 a.m. unless notified differently.

If anyone has conflicts with the proposed dates, please contact Isabel Velasquez at (512) 837-9236.

B

CREDIT UNION COMMISSION MEETING MINUTES

Draft copies of the minutes for the June 10, 2022 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 June 10, 2022 be approved as presented.

CREDIT UNION COMMISSION MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane, Austin, Texas
June 10, 2022

A. CALL TO ORDER -- Chair Jim Minge called the meeting to order at 9:01 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, David Bleazard, Karyn Brownlee, Beckie Stockstill Cobb, Sherri Merket, David Shurtz and Kay Swan. The Chair introduced general counsel Nancy Elmilady, who will serve as legal counsel for the commission at this meeting. Representing the Department staff were John J. Kolhoff, Commissioner, Robert Etheridge, Deputy Commissioner, and Joel Arevalo, Director of Information and Technology. Chair Minge 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 (**June 1, 2022 TRD#2022003233**).

❖ RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES --

Chair Minge inquired if there were any requests or motions to excuse an absence. Mrs. Cobb moved to excuse commission member Yusuf Farran from the Commission meeting on June 10, 2022. Ms. Merket seconded the motion, and the motion was unanimously adopted.

❖ GENERAL PUBLIC COMMENT -- Chair Minge 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 MEETINGS (March 11, 2022 and May 27, 2022) -- The Chair referred the members to the draft minutes of the two previous meetings included in the agenda packet and asked for any proposed edits. Hearing

none, the chair asked for a motion to approve the minutes. Mr. Bleazard moved for approval of the minutes of March 11, 2022 and May 27, 2022 as presented. Mrs. Bayless seconded the motion, and the Commission carried the motion unanimously.

C. DEPARTMENT'S FY 2022 BUDGET AND FINANCIAL PERFORMANCE – Commissioner Kolhoff reported that 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 and capital improvement budget in support of the Strategic Plan. At the end of the eight months, total expenditures were \$2.476 million or approximately 22% less than budgeted projections of \$3.164 million. Almost all lines performed below budgeted levels apart from other expenditures for FY 2022. Mr. Kolhoff further reported that 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. Mr. Kolhoff reported that the unspent funds from the FY 2022 budget predominately represent travel related savings as a result of the pandemic's impact and personnel savings due to vacancies.

After a brief discussion, the Commission took no action.

D. DEPARTMENT'S OPERATING PLAN AND BUDGET FOR FISCAL YEAR 2023 – Commissioner Kolhoff explained that consistent with the Budget Assumptions approved by the Commission, the following pages detail a proposed budget for FY 2023 of \$5,057,455 which represents a 3.32% increase from the FY 2022 budget. The proposed budget includes strategic initiative funding for the costs related to establishing an internal audit function (\$62,000); compensation program performance and equity-based amendments (\$129,761); additional examiner positions (\$264,578); and a legal support budget (\$20,000). The budget also includes capital improvement funding of \$25,000, to repair the Department's roof and \$30,000 to maintain our internal network infrastructure.

After a short discussion, Mr. Shurtz moved that the Commission adopt the proposed FY 2023 Operating Plan and Budget, with a total of budget of \$5,057,455 and 33 FTEs. Mrs. Swan seconded the motion and the commission carried the motion unanimously.

E. STATE CREDIT UNION SYSTEM – Deputy Commissioner Etheridge briefly indicated the Texas economy continues to perform well and the economic outlook is optimistic, even as inflationary pressures increase in Texas and throughout the country. The unemployment rate for Texas declined to 4.3% at month-end March 2022, down from 5.0% percent at year-end 2021 and 6.9% from one year ago. In addition, the unemployment rates for three of the four metropolitan areas in Texas remains below the national average of 3.6 percent.

Overall, the aggregate financial performance of Texas chartered credit unions was strong during the first quarter of 2022. Capital strength for the Texas industry was sound, with earnings and asset quality performance ratios reaching their best levels over the last seven years for the second consecutive quarter. The strong financial performance continues to indicate Texas charters remains safe and sound. While there has been a slight dilution of capital ratios over the last several years tied to stimulus deposits and flight to safety, it is anticipated that deposit and asset growth will be controlled during FY 2022 resulting in a strengthening 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, and political implications to safeguard the financial interests of millions of Texans.

After a brief discussion of some of the key financial trends, no formal action was taken by the Commission.

F. RULEMAKING REVIEW

(1) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 95, Subchapters A (Insurance Requirements); B (Liquidating Agents); C (Guaranty Credit Unions); D (Disclosure for Non-federally Insured Credit Unions) and Re-adoption of Rules.** 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 95, Subchapters A (Insurance Requirements); B (Liquidating Agents); C (Guaranty Credit Unions); and D (Disclosure for Non-federally Insured Credit Unions) and is recommending no changes be made. No comments were received regarding the review.

After a short discussion, Ms. Merket moved that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 95, Subchapters A (Insurance Requirements); B (Liquidating Agents); C (Guaranty Credit Unions); and D (Disclosure for Non-federally Insured Credit Unions)** continue to exist and that the Commission readopt these rules. Mrs. Brownlee seconded the motion, and the commission carried the motion unanimously.

(2) **Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Section 91.720 (Small-Dollar, Short-Term Credit).** Commissioner Kolhoff noted that 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 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.

After a brief discussion, Mrs. Cobb moved that the Commission adopt the proposed amendments to rule **7 TAC Section 91.720** without changes to the proposed text as published in the *Texas Register*. Mrs. Bayless seconded the motion, and the commission carried the motion unanimously.

(3) Adoption of Proposed Amendments to 7 TAC, Part 8, Chapter 153 (Home Equity Lending). Commissioner Kolhoff reported that the interpretations are administered by the Joint Financial Regulatory 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 purposes of the proposed rule changes to 7 TAC Chapter 153 are to amend the definition of “business day” and to make technical corrections.

After a short discussion, Mrs. Brownlee moved that the Commission approve for adoption of the amendments to **7 TAC, Part 8, Chapter 153** concerning Home Equity Lending. Mr. Shurtz seconded the motion, and the Commission carried the motion unanimously.

(4) Amendments to 7 TAC, Part 6, Chapter 91, Section 91.515 (Financial Reporting). Commissioner Kolhoff reported that the proposed amendments are to align state and federal regulatory requirements relating to small institutions implementation of Generally Accepted Accounting Principles (GAAP). The National Credit Union Administration’s 12 CFR Part 702 enables institutions of \$10 million in assets or less to determine their charges for loan losses outside (GAAP), by not requiring implementation of Current Expected Credit Loss (CECL). This amendment would raise the current threshold for small Texas chartered credit unions to utilize an accounting methodology outside of (GAAP) from the current maximum asset size of \$5million to \$10 million.

Chair Minge opened the floor for comments or questions from the public on the proposed amendments.

- **Nathan Behncke -- Associated Regulatory Council, Cornerstone Credit Union League.** Mr. Behncke agreed with Commissioner Kolhoff's comments that sometimes these very extensive accounting methods may not be appropriate for smaller credit unions but appreciates and supports the proposal and will give state-chartered credit unions parity to federal credit unions.

After a short discussion, Mr. Bleazard moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7 TAC Section 91.515. Mrs. Cobb seconded the motion, and the Commission carried the motion unanimously.

(5) Amendments to 7 TAC, Part 6, Chapter 91, Section 91.901 (Reserve Requirements). Commissioner Kolhoff expressed the purpose of the proposed amendments is to amend the states reserve requirements relative to institutions whose net worth falls below 7% to align with requirements recently amended by the National Credit Union Administration and found in NCUA Rules and Regulations 12 CFR Part 702.106. The amendments would require such institutions to increase "net worth" instead of the current "net worth reserves" and simplify the calculation of the amount of required earning retention by providing only a quarterly measurement regardless of the period the credit union pays dividends. The proposed changes would ensure state requirements would simplify the interaction of federal and state law relative to credit unions needing to comply with this provision.

After a brief discussion, Mrs. Bayless moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to 7

TAC Section 91.901. Ms. Merket seconded the motion, and the Commission carried the motion unanimously.

(6) Proposed New Rule 7 TAC, Part 6, Chapter 97, Section 97.208 (Vendor Protests). Commissioner Kolhoff reported the purpose of the proposed rule is to set forth the Department's procedures for resolving vendor protests relating to purchases as required by Texas Government Code Section 2155.076, adoption of the procurement rules of the Texas Comptroller of Public accounts pursuant to Texas Government Code Section 2156.005(d) and the negotiation and mediation of a claim for breach of contract as required by Texas Government Code Section 2260.052(c). Furthermore, the Commission proposes this new rule to replace any formal or informal policies or procedures governing the resolution of contract disputes and to carry out the requirements of Texas Government Code Sections 2155.076 and 2156.005(d), and Texas Government Code Chapter 2260.

After a short discussion, Mrs. Brownlee moved that the Commission approve for publication and comment in the *Texas Register* the proposed new rule 7 TAC Section 97.208. Mr. Shurtz seconded the motion, and the Commission carried the motion unanimously.

G. LITIGATION UPDATE REGARDING PENDING LITIGATION. General Counsel Elmilady gave an update to the Commission. No pleadings or public filings have occurred since the last meeting; except for a change of attorney. This attorney has been assigned from the Attorney General's Office to represent us and her name is Alyssa Lawson.

After a brief discussion, the Commission took no action.

H. COMMISSIONER RESIGNATION STATUS. Commissioner Kolhoff reported that it was a huge decision to make but he has decided to tenure his

resignation effective July 15, 2022 although he is excited to explore other career opportunities. He expressed his heart felt thank you to the staff, industry and the Commission for providing support throughout his tenure as Commissioner.

Chair Minge stated that the Commission would be entering into Executive Session as provided under Section 551.074 and 551.071 of the Government Code for the purpose to deliberate on personnel matters and for consultation and advice of counsel for legal matters subject to attorney-client privilege. The Commission entered Executive Session at 10:02 a.m.

At 10:47 a.m., the Commission returned to open session. Chair Minge inquired if there were any members and who wished to bring forth any motion related to the commission's discussion in executive session? Any comments from the public? Hearing none, Mrs. Brownlee moved that Deputy Commissioner Robert Etheridge assume the position of interim commissioner effective July 16, 2022 with a salary of 10% over his current salary. Mrs. Bayless seconded the motion, and the Commission carried the motion unanimously. For the record, a stipulation was made that it ends when Mr. Etheridge is no longer interim, and this is stated in our policy as well. The Commission congratulated Mr. Etheridge and appreciated his willingness to serve tremendously.

Mrs. Brownlee moved that \$50,000 be allotted for the budget for the commissioner succession search process. Ms. Merket seconded the motion, and the Commission carried the motion unanimously.

I. COMMISSION POLICY, RESPONSIBILITIES, COMMUNICATIONS AMONGST COMMISSION MEMBERS, COMMISSIONER AND GENERAL COUNSEL. Chair Minge announced that this item would be tabled.

J. RESOLUTION OF APPRECIATION FOR OUTGOING COMMISSION MEMBER STEVE GILMAN. Commissioner Kolhoff indicated that it is the practice of the Commission to adopt a resolution of appreciation to recognize the service of Commission members upon the completion of their terms of office.

After a brief discussion, Mr. Bleazard moved to approve the Resolution of Appreciation for Outgoing Commission Member Steve Gilman, as presented, and directed that a copy of the appropriate resolution be given to the former member as a token of the Commission's appreciation. Mr. Shurtz seconded the motion and the Commission carried the motion unanimously.

K. DESIGNATION OF A VICE CHAIR AND APPOINTMENTS TO THE COMMISSION'S TWO STANDING COMMITTEES (Rules and Audit) and COMMITTEE POLICY REVIEW. Chair Minge noted that as stipulated in Commission Policy, the Chair was reappointing Sherri Merket as Vice Chair of the Commission. Mr. Minge also designated members to serve on the two standing committees and a select policy manual review committee and noted that the minutes should reflect the following appointments:

 **Rules Committee**

David Shurtz, Chair
Liz Bayless
Beckie Stockstill Cobb

 **Audit Committee**

Kay Swan, Chair
Liz Bayless
David Bleazard

 **Policy Manual Review Committee**

David Bleazard, Chair
Karyn Brownlee
David Shurtz

After a short discussion, the Commission took no action.

L. OFFER OF PURCHASE FOR CREDIT UNION DEPARTMENT BUILDING LOCATED AT 914 EAST ANDERSON LANE, TEXAS 78752-1699. Commissioner Kolhoff reported that a realtor has approached the Department and provided a purchase offer on the Department's building.

Chair Minge stated that the Commission would be entering into Executive Session as provided under Section 551.072 for the purposes of deliberation regarding the purchase, exchange, lease or value of real estate property and potential negotiations with a third party. The Commission entered Executive Session at 10:52 a.m.

At 11:23 a.m., the Commission returned to open session. Chair Minge inquired if there were any members and who wished to bring forth any motion related to the commission's discussion in executive session? Any comments from the public? Hearing none, Mr. Shurtz moved that we decline the realtor's purchase offer of our building. Mrs. Cobb seconded the motion, and the Commission carried the motion unanimously.

M. FUTURE COMMISSION MEETINGS: AGENDA ITEMS, ARRANGEMENTS, AND DATES. Chair Minge reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for September 16, 2022 at 9:00 a.m., in Austin.

Chair Minge opened the floor to the public for discussion.

- **Melodie Durst, Executive Director, Credit Union Coalition of Texas.** Mrs. Durst briefly explained that since this was likely the last opportunity that she would have a chance to publicly say thank Commissioner Kolhoff for the last three and half years. Furthermore, she appreciated Kolhoff's openness to discuss issues impacting the industry and appreciated his professionalism. She wished Commissioner Kolhoff all the best in his next endeavors.
- **Nathan Behncke -- Associated Regulatory Council, Cornerstone Credit Union League.** Mr. Behncke concurred with Mrs. Durst's comments and thanked Commissioner Kolhoff for his service here in Texas. The League appreciates all that he has done for the Industry. Mr. Kolhoff has been very easy to work with and a good advocate for credit unions so they are sorry to see him go.

Commissioner Kolhoff responded that it has been a very hard decision to make and really appreciated the opportunity the Commission has given him these three and half years. The Department was strong prior to his arrival thanks to former Commissioner Feeney, but the Department has continued to build to take the Department and Industry into the future. He insisted that he is confident that it will continue to go there under the Commission's leadership.

Chair Minge thanked the Commissioner and truly appreciated what he has done to help Texas charters.

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

Chair Minge reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for September 16, 2022 at 9:00 a.m., in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chair Minge adjourned the meeting at 11:28 a.m.

Jim Minge
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 09-08-2022)
<u>June 10, 2022</u>		
7 TAC, Part 6, Chapter 95 Subchapter A, B, C, and D Share and Depositor Insurance Protection	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 06/24/2022.
7 TAC Section 91.720 Small-Dollar, Short-Term Credit	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 06/24/2022.
Chapter 153, Part 8 The Home Equity Lending 153.1	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 07/08/2022.
7 TAC, Part 6, Chapter 91 Subchapter E, Section 91.515 Financial Reporting	Published in <i>Texas Register</i> with a 31 day comment period.	Published in <i>Texas Register</i> on 06/24/2022.
7 TAC, Part 6, Chapter 91 Subchapter I, Section 91.901 Reserve Requirements	Published in <i>Texas Register</i> with a 31 day comment period.	Published in <i>Texas Register</i> on 06/24/2022.
7 TAC, Part 6, Chapter 97 Subchapter C, Section 97.208 Vendor Protests (New Rule)	Published in <i>Texas Register</i> with a 31 day comment period.	Published in <i>Texas Register</i> on 06/24/2022.

C

DEPARTMENT'S FY 2022 BUDGET FINANCIAL PERFORMANCE

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

BACKGROUND: In 2022 the Commission adopted a strategic plan for Fiscal Years 2023-2027. 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 fiscal year 2022. At the end of August 2022, total expenditures were \$961,327 or approximately 20% less than budgeted projections. Aggregate expenses for each major expenditure category ended the year below budget, with only two sub-categories ending the year above budget estimates. In those two sub-categories, the largest over budget variances were a result of higher than anticipated costs related to state services (SWCAP), and costs related to temporary staffing utilized for the Legal Assistant position.

The significant cost savings realized for FY 2022 was due primarily to travel related savings as a result of a reduction of on-site examination work, personnel savings due to vacancies, and the budgeted roof replacement which did not occur due to an assessment indicating only repairs were necessary.

**Net of an annual reserve allocation of \$51,250 approved by the commission in 2020.*

RECOMMENDED ACTION: No action is anticipated.

**Credit Union Department
BY 2022 Budget Analysis
For the Period Ended 08/31/22**

	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	\$4,894,832	\$4,333,045	(\$561,786)	89%
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	\$18,977	\$18,977	
Other	(\$51,250)	(\$51,250)	(\$51,250)	\$0	
Operating Income Subtotal	\$4,843,582	\$4,843,582	\$4,310,772	(\$532,809)	89%
Interest Income (Operating Acct)	\$0	\$0	\$9,819	\$9,819	
Interest Income (Contingency Acct)	\$0	\$0	\$4,778	\$4,778	
TOTAL REVENUES - FUNDS AVAILABLE TO COVER EXPENDITURES	\$4,843,582	\$4,843,582	\$4,325,370	(\$518,212)	89%
EXPENDITURES:					
Personnel Expenses:					
Salaries and Wages	\$2,750,629	\$2,750,629	\$2,526,161	\$224,468	92%
Employee Benefits	\$899,512	\$899,512	\$812,478	\$87,034	90%
Total Personnel Expenses	\$3,650,141	\$3,650,141	\$3,338,639	\$311,502	91%
Travel Expenses:					
In State					
Examinations			\$117,252		
Training/Conferences			\$14,487		
Meetings			\$17,706		
Public Forums			\$0		
Other			\$504		
Total In-State	\$375,073	\$375,073	\$149,950	\$225,123	40%
Out-of-State	\$30,000	\$30,000	\$9,284	\$20,716	31%
Commission	\$26,500	\$26,500	\$13,039	\$13,461	49%
Total Travel Expenses	\$431,573	\$431,573	\$172,272	\$259,300	40%
Other Operating Expenses:					
Communication/Utilities	\$51,001	\$51,001	\$55,441	(\$4,440)	109%
Professional Services/Fees	\$221,790	\$221,790	\$85,124	\$136,666	38%
Supplies/Materials	\$59,470	\$59,470	\$31,832	\$27,638	54%
Printing and Reproduction	\$2,755	\$2,755	\$261	\$2,494	9%
Repairs/Maintenance	\$290,665	\$290,665	\$15,631	\$275,034	5%
Rentals and Leases	\$5,500	\$5,500	\$4,137	\$1,363	75%
Other Operating	\$130,688	\$138,469	\$186,699	(\$48,230)	135%
Total Other Operating Expenses	\$761,869	\$769,650	\$379,125	\$390,525	49%
TOTAL EXPENDITURES	\$4,843,583	\$4,851,364	\$3,890,037	\$961,327	80%
REMAINING FUNDS TO COVER EXPENDITURES (Actuals)			\$435,333		

D

STATUS OF THE STATE CREDIT UNION SYSTEM

D. Status of the State Credit Union System.

BACKGROUND: The Texas economy continues to perform well, although inflationary pressures continue to increase at both the state and national levels. The unemployment rate for Texas declined to 4.1 percent at month-end June 2022, down from 5.0 percent six months earlier. The Texas Workforce Commission reported that Texas ended June with approximately 13.43 million non-agricultural jobs, a new Texas record, and approximately 465,000 jobs more than the pre-pandemic levels in February 2020. Additionally, approximately 82,500 nonagricultural jobs were added during the month of June alone. The number of unemployed in Texas totals approximately 639,500, down approximately 263,000, or 29 percent, during the last twelve months and over 60 percent 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 similar or below the national average of 3.8 percent. Overall, the Texas economy and employment trends will continue to be impacted on local inflationary pressures, the war in Ukraine and as well as supply chain shortage trends as a result of the COVID-19 and struggles to return the production of goods to pre-pandemic levels.

Overall, the financial performance of Texas credit unions has remained strong during the first half of 2022. Capital strength is sound, and earnings and asset quality performance ratios continue to be at their strongest levels over the last seven years. The strong financial performance for Texas state-chartered credit unions is illustrated as follows:

Key Ratio	2016	2017	2018	2019	2020	2021	06-2022
Net Worth/Total Assets	10.26	10.30	10.82	11.10	10.36	10.43	10.49
Delinquent Loans/Total Loans	0.82	0.89	0.75	0.71	0.75	0.52	0.45
Net Charge-Offs/Average Loans	0.69	0.75	0.68	0.69	0.57	0.36	0.31
Return on Average Assets	0.62	0.71	0.88	0.88	0.70	1.08	0.98

Earnings performance data for Texas credit unions reflects that strong net income performance continues to strengthen net worth ratios. Further, deposit growth has slowed slightly during the first half of 2022 and, if this trend continues, will result in further enhancement of net worth positions for

Texas charters. While the outlook for the Texas industry remains 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 June 30, 2022, there were 174 state-chartered credit unions in Texas, down one charters from twelve months ago. Assets in these credit unions totaled \$59.17 billion, an increase of \$4.95 billion since June 30, 2021, for an annualized growth rate of 9.1 percent. The average net worth ratio is 10.49 percent, up 28 basis points from the 10.21 percent level at June 30, 2021.

Loans for Texas chartered credit unions totaled \$40.90 as of June 30, 2022. This is an increase of \$5.40 billion since June 30, 2021, for an annualized growth rate of 15.2 percent.

Shares for Texas chartered credit unions totaled \$51.03 billion as of June 30, 2022. This is an increase of \$3.63 billion, or 7.7 percent since June 30, 2021.

Texas chartered credit unions average loan delinquency ratio is at 0.45 percent as of June 30, 2022, compared to a ratio of 0.52 percent as of June 30, 2021.

At June 30, 2022, state-chartered credit unions reported year to date aggregate net income of \$281.14 million, which compares similarly to the \$280.37 million net income generated for the same six-month period during 2021.

PROBLEM INSTITUTIONS: As of June 30, 2022, there were 23 credit unions assigned a CAMELS rating of 3 or higher, compared to 16 credit unions at June 30, 2022. Although the number of problem institutions has increased, the aggregate regulated assets of these institutions has declined by 53.5 percent during the same twelve-month period, from \$2.06 billion to \$0.96 billion. The average asset size of these credit unions is \$41.6 million. Credit unions in this 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 June 30, 2022, the Department had the following administrative sanctions outstanding:

Dividend Restrictions	0
LUAs	0
Determination Letters	0
Conservatorships	1
Cease and Desist	4

CHARTERING ACTIVITY

New Charters*	0
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*Since last commission meeting.

RECOMMENDED ACTION: No formal action is anticipated.

E

RULEMAKING MATTERS

Four 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 Rule Review of **7 TAC, Part 6, Chapter 91, Subchapter E §§91.501, 91.502, 91.503, 91.510 and 91.516** (Direction of Affairs), **and Subchapter F §§91.601, 91.602, 91.608 and 91.610** (Accounts and Services) and Re-adoption of Rules.
2. Adoption of Proposed Amendments to **7 TAC, Part 6, Chapter 91, Subchapter E, Section 91.515** (Financial Reporting).
3. Adoption of Proposed Amendments to **7 TAC, Part 6, Chapter 91, Subchapter I, Section 91.901** (Reserve Requirements).
4. Adoption of Proposed Amendments to New Rule **7 TAC, Part 6, Chapter 97, Section 97.208** (Vendor Protests).

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

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.

MANDATORY RULE REVIEW

E. (1) Adoption of Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter E §§91.501, 91.502, 91.503, 91.510 and 91.516 (Direction of Affairs), and Subchapter F §§91.601, 91.602, 91.608 and 91.610 (Accounts and Services) 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 E (Direction of Affairs), and Subchapter F (Accounts and Services)**. Prior to the rule review, the Commission determined that certain changes were necessary for 7 TAC, Section 91.515, which was published, which is scheduled for adoption in the next agenda item.

Notice of the review and a request for comments on the rules in this chapter was published in the July 29, 2022 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 recommends that the Commission readopt the rules as previously published.

RECOMMENDED MOTION: I move that the Commission find that the reasons for adopting 7 TAC, Part 6, Chapter 91, Subchapter E (Direction of Affairs), and Subchapter F (Accounts and Services) continue to exist and that the Commission readopt these rules.

The Credit Union Commission (Commission) has completed its review of Chapter 91 Subchapter E (relating to Direction of Affairs) and Subchapter F (relating to Accounts and Services).

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 E through F were published in the *Texas Register* as required on July 29, 2022 (47 TexReg 4561). 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 E. Direction of Affairs

§91.501. Director Eligibility and Disqualification.

(a) **Board Representation.** The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) **Qualifications.** A member may not serve as director of a credit union if that member:

- (1) has been convicted of any criminal offense involving dishonesty or breach of trust;
- (2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);
- (3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;
- (4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;
- (5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;
- (6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;
- (7) has failed to complete and return a director application in accordance with subsection (c) of this section; or
- (8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) **Director application.** Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) **Director continuing education.** Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to achieve and maintain professional competence. The policy shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that is appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) **Prohibited conduct.** A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s).

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six (6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

§91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

- (b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors, (hereafter referred to as directors) or committee members for attending duly called meetings at which appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to annual report to membership). A credit union, however, may not pay any meeting fees to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.
- (c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are excessive as defined in §91.502(f).
- (d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:
- (1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;
 - (2) the board of directors develops and maintains written policies and procedures regarding this matter; and
 - (3) the arrangement ceases immediately upon the person's leaving office.
- (e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.
- (f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.
- (g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

- (1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and
- (2) it is in accordance with written board policies and procedures.

§91.503. Change in Credit Union President

The board of directors, in executing its fiduciary responsibilities, may find it necessary to replace the credit union's president. The board shall submit written notification to the commissioner within ten days of any such personnel change. For purposes of this section, the term president refers to the individual responsible for the day-to-day operation of the credit union, irrespective of the actual title given to such individual.

§91.510. Bond and Insurance Requirements.

(a) Fidelity bond. Each credit union shall purchase and maintain a blanket fidelity bond covering the officers, directors, employees, committee members, and its agents, against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery or alteration of instruments, misplacement or mysterious disappearance. All carriers writing credit union blanket bonds must be authorized by the Insurance Commissioner for the state of Texas as an acceptable fidelity on bonds in this state.

(1) Subject to approval by the credit union's board of directors, the amount of coverage to be required for each credit union shall be determined by the credit union, based on its assessment of the level that would be safe and sound in view of the credit union's potential exposure to risk.

(2) Each credit union may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the credit union's board of directors, additional coverage is warranted.

(3) The commissioner may require additional coverage of any credit union when, in his opinion, the fidelity bond in force is insufficient to provide adequate fidelity coverage. It shall be the duty of the board of directors to obtain the additional coverage within 30 days after the date of written notice of the findings by the commissioner.

(b) Cancellation. A fidelity bond must include a provision requiring written notification by the fidelity to the commissioner prior to cancellation of any or all coverages set out in the bond which includes a brief statement of cause for termination.

(c) Other insurance. Each credit union shall, subject to approval by the board, purchase appropriate insurance coverages to insure the credit union and its assets against loss or damage by fire, liability, casualty or any other insurance risks.

(d) Board review. The board of directors of each credit union shall formally approve the credit union's bond and insurance coverages. In deciding whether to approve the coverages, the board

shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board's approval shall be included as part of the minutes of the meeting at which the board approves coverages. Additionally, the board of directors shall review the credit union's bond and insurance coverages at least annually to assess the continuing adequacy of coverage.

(e) Review by fidelity company. Credit unions which are analyzed by a fidelity company shall notify the commissioner of the analysis within 30 days of the review commencement. The report of the review is to be provided to the commissioner upon request. The confidentiality of the report shall be preserved in the same manner afforded a report of examination conducted by the department.

(f) Insuring organization's bond requirements. A credit union shall also comply with all bond requirements imposed by an insuring organization as a condition to maintain insurance on share and deposit accounts. Any credit union that fails to meet the minimum fidelity bond specifications contained within Part 741.201 of the NCUA Rules and Regulations may be deemed to be engaged in an unsafe practice pursuant to Finance Code §122.255.

§91.516. Audits and Verifications.

(a) Audit requirements. At least once every calendar year, the board of directors shall obtain or cause to be performed an annual audit of the credit union which must cover the period elapsed since the last audit period. A summary of the audit must be reported to the members at the next membership meeting. The audit must be conducted in accordance with generally accepted auditing standards by a licensee of the Texas State Board of Public Accountancy or as permitted under the provisions of §741.202(a) of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741).

(b) Definitions.

(1) A record-keeping deficiency is serious if the commissioner reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets.

(2) A serious recordkeeping deficiency is persistent when it continues beyond a usual, expected or reasonable period of time.

(c) Verification obligation. The board of directors shall, at least once every two years, cause the share, deposit, and loan accounts to be verified against the records of the credit union as prescribed in §741.202(b) of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741).

(d) Remedies. The commissioner may compel a credit union to obtain an audit and/or a verification of members' accounts, performed by an independent person, for any year in which any one of the following conditions is present:

(1) the credit union has not obtained an annual audit or caused an audit/verification to be performed;

(2) the credit union has obtained an audit/verification or performed an audit/verification which does not meet the specified requirements; or

(3) the credit union has experienced serious and persistent recordkeeping deficiencies.

(e) Opinion audit required. The commissioner may compel a credit union to obtain an opinion audit performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed by the state for any year in which the credit union has experienced persistent serious recordkeeping deficiencies. The objective of such an audit is to obtain an unqualified opinion on the credit union's financial statements.

Subchapter F. Accounts and Services

§91.601. Share and Deposit Accounts.

(a) Accounts. A credit union may offer any type of share or deposit accounts and prescribe the terms and conditions relating to the accounts as established by written policies approved by the board of directors.

(b) Policies and procedures. Each credit union, before accepting any funds for any share or deposit accounts, shall adopt, implement and maintain appropriate policies and procedures which address, at a minimum, asset liability management and adequate liquidity levels.

(c) Limitation on deposit accounts. Acceptance of funds from a depositor authorized by the Act that is not within the credit union's field of membership is subject to the limitations prescribed by §123.201(b) of the Act. This restriction does not apply to a credit union accepting for deposit the money of:

(1) the United States or any agent or instrumentality of the United States;

(2) this or another state; or

(3) a political subdivision of this or another state.

(d) Nonmember deposit. The written documentation evidencing a deposit under subsection (c) of this section shall clearly and conspicuously disclose that the funds are not insured. This

section does not apply to insured deposits from other credit unions or deposits received by a credit union with a low-income designation.

§91.602. Solicitation and Acceptance of Brokered Deposits.

(a) Definitions.

(1) Brokered deposit means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

(2) Deposit broker means a person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with financial institutions; or the business of placing funds with financial institutions for the purpose of selling interests in the deposit to third parties.

(b) Limitation. A credit union that has a net worth ratio of less than six percent as defined in §91.901 of this title (relating to Reserve Requirements) or is not deemed adequately capitalized by its insuring organization may not accept, renew or roll over any brokered deposit unless it has been granted a waiver by the commissioner.

(c) Risk management and due diligence. Credit unions utilizing brokered deposits shall ensure that proper risk management practices are in place, including appropriate written asset/liability management policies, business strategies, concentration limits, monitoring procedures, and contingency funding plans. In addition, credit unions must implement adequate due diligence procedures before entering into a business relationship with a deposit broker.

§91.608. Confidentiality of Member Records.

(a) Confidentiality of members' accounts. No credit union officer, director, committee member or employee may disclose to any person, other than the member, or to any company or governmental body the individual savings, shares, or loan records of any credit union member, contained in any document or system, by any means unless specifically authorized to do so in writing by such members, except as follows:

(1) reporting credit experience to a bona fide credit reporting agency, another credit union, or any other bona fide credit-granting business and/or merchants information exchange, provided that applicable state and federal laws and regulations pertaining to credit collection and reporting are followed;

(2) furnishing information in response to a valid request from a duly constituted government agency or taxing authority, or any subdivision thereof, including law enforcement agencies;

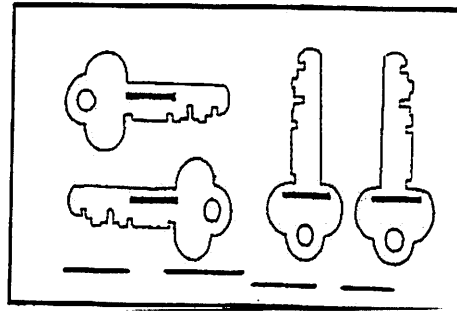
(3) furnishing information, orally or in written form, in response to the order of a court of competent jurisdiction or pursuant to other processes of discovery duly issuing from a court of competent jurisdiction;

- (4) furnishing reports of loan balances to co-borrowers, co-makers, and guarantors of loans of a member and of share or deposit account balances, signature card information, and related transactions to joint account holders;
 - (5) furnishing information to and receiving information from check and draft reporting, clearing, cashing and authorization services relative to past history of a member's draft and checking accounts at the credit union; or
 - (6) as otherwise authorized by law, including access by examiners of the Department.
- (b) Non-disclosure statement. Nothing in this rule shall prohibit the credit union from releasing the name and address of members to assist the credit union in its marketing efforts or sale of third party products, provided, however, that the credit union obtains a written non-disclosure statement providing assurances that the information will be used exclusively for the benefit of the credit union and no other.
- (c) Privacy policy. Each credit union shall develop, implement and maintain a written policy on the protection of nonpublic personal information of individual members in its possession. This policy shall be consistent with the disclosure and reporting requirements applicable to federally insured credit unions as addressed in Part 716 of NCUA Rules and Regulations.
- (d) Relation to federal laws. This section shall not be construed as altering or affecting any applicable federal statute, regulation, or interpretation that affords a member greater protection than provided under this section.

§91.610. Safe Deposit Box Facilities.

- (a) Purpose. Finance Code §59.110 requires credit unions to imprint keys issued to safe deposit boxes with the institution's routing number. In addition, it requires a report to the Department of Public Safety if the routing number is altered or defaced so that the correct routing number is illegible. The purpose of this section is to clarify the requirements of the noted section of the Finance Code.
- (b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Credit union — This term includes all state or federal credit unions that have been assigned a routing number unique to that institution.
 - (2) Routing number — The number printed on the face of a share draft or check in fractional form or in nine-digit form that identifies a paying financial institution.
- (c) Imprinting requirements. A credit union which has been issued a routing number shall imprint that routing number on safe deposit box keys on either the head of the key or the shank of the key if there is adequate room. The typical locations to be used are indicated in the following instructions and diagram. The imprint can be made anywhere on the key that has the required space available. When positioning the die on the key, be careful to place the die on the key where it will imprint on a flat surface and not in the area of the key cuts or on any of the shank ridges or grooves. Imprinting in these areas may interfere with the proper working of the key in the lock and may cause damage. In the event these standard areas for the location of the imprint are unavailable, either because of grooves on the key shank or the fact that the head of the key already has names and other numbers imprinted on it, then the credit union may attach to the key a tag imprinted with the routing number. The tag used must be of such a nature as to be secure. Thus, a paper or cardboard tag or a tag affixed with string will not be acceptable. However, any other

medium such as plastic or metal which can retain an imprint of a number shall be acceptable. The tag may be attached in any way to assure its affixation to the key. Typically, this will mean inserting the tag or a device to affix the tag through the hole in the head of the key normally used for placing keys on key chains. The tag method shall not be used if there is adequate room on the key itself for imprinting the numbers. There are four standard areas for the location of the imprinted routing number. These include: the head of the key, the shank of the key, and either place on the reverse side of the key. The standard imprint areas are shown as follows.



- (a) Branch designation. A credit union may, but is not required to, add a three-digit branch designation to its routing number. Thus, the main credit union facility should receive the designation "001" and branch facilities should receive numbers consecutively beginning with "002" with successive numbers as needed. However, the credit union may control the branch numbering system used provided that the credit union maintains a master list of branch designations used for this purpose. The master list should be maintained at the main office of the credit union and shall include the three-digit branch designation and address of facility. The credit union then may imprint safe deposit box keys or tags with the routing number plus three-digit branch designation for full identification of the facility.
- (b) Report of defaced or altered key. Within 10 days after an officer or employee of a credit union observes that a key used to access a safe deposit box has had the routing number altered or defaced or the tag removed, a report shall be prepared of such incident. The report shall be on a form promulgated by the Credit Union Department in the form of the attached **Exhibit A**. The report should be submitted to the Department of Public Safety, Attention: Criminal Law Enforcement, Box 4087, Austin, Texas 78773-0001. The report should be mailed no later than ten days after the incident. The credit union should retain one copy of the incident report for a period of three years. Nothing in this rule nor in the Finance Code §59.110 shall require a credit union to inspect routing numbers imprinted on a key or an attached tag to determine if the number has been altered or defaced.
- (c) Effective date; applicability to existing keys. A credit union must imprint all safe deposit box keys on or after September 1, 1992. Additionally, the imprinting requirement applies to all keys issued prior to September 1, 1992. However, keys for boxes rented prior to September 1, 1992, need not be imprinted with the routing number unless and until a member presents a safe deposit box key at a credit union for access to a box. Nothing in this rule or the Finance Code §59.110 shall be construed to require a credit union to provide notice to its safe deposit box users or to otherwise require such members to present their keys for imprinting. However, on the first date after September 1, 1992, that a member presents a key which has not been imprinted, the credit union shall imprint the key with the routing numbers as required by Finance Code §59.110.

(d) Effect of change in routing number. In the event a credit union's routing number is changed as a result of a merger, acquisition, or other change, safe deposit box keys need not be replaced with a new routing number provided that the credit union maintains a master list of the routing numbers used to imprint keys.

**REPORT OF DEFACED OR ALTERED ROUTING
NUMBER ON SAFE DEPOSIT BOX KEY**

INSTRUCTIONS: Complete the information below and submit the original report to Department of Public Safety, Attn: Criminal Law Enforcement, Box 4087, Austin, Texas 78773-0001, no later than 10 days after the defaced or altered key is used to access the box. Retain one copy for your files for a period of three years.

CREDIT UNION INFORMATION

Name of credit union

Address of safe deposit box facility

Name and title of contact person at facility

Area code and phone number of facility

Routing number and branch designation (if any)

INCIDENT INFORMATION

Member name

Date member presented defaced or altered key

Description of problem with key

Date of reports:

Exhibit A

FINANCIAL REPORTING

E. (2) Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter E, Section 91.515 (Financial Reporting).

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the Texas Register the proposed amendments to Rule 91.515. No comments were received regarding the proposed amendments.

The purpose of the proposed amendments is to align state and federal regulatory requirements relating to small institutions implementation of Generally Accepting Accounting Principles (GAAP). The National Credit Union Administration's 12 CFR Part 702 enables institutions of \$10 million in assets or less to determine their charges for loan losses outside Generally Accepted (GAAP), by not requiring implementation of current expected credit loss (CECL). This amendment would raise the current threshold for small Texas chartered credit unions to utilize an accounting methodology outside of GAAP from the current maximum asset size of \$5 million to \$10 million.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the amendments as previously published.

RECOMMENDED MOTION: I move that the Commission adopt the proposed amendments to 7 TAC **Section 91.515** without changes to the proposed text as published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts the amendments 7 TAC, Chapter 91, §91.515 concerning Direction of Affairs, without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3609). The Amendments will not be republished.

The purpose of the proposed amendments is to align state and federal regulatory requirements relating to small institutions implementation of Generally Accepting Accounting Principles (GAAP). The National Credit Union Administration's 12 CFR Part 702 enables institutions of \$10 million in assets or less to determine their charges for loan losses outside Generally Accepted (GAAP), by not requiring implementation of current expected credit loss (CECL). This amendment would raise the current threshold for small Texas chartered credit unions to utilize an accounting methodology outside of GAAP from the current maximum asset size of \$5 million to \$10 million.

The Commission received no written comments on the proposed amendments to the rule. All comments supported the proposed modifications.

The rule changes are adopted 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 of the Texas Finance Code.

The statutory provisions affected by this adoption are Texas Finance Code, Sections 122.101 and 122.102.

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

<rule>

§91.515. Financial Reporting.

- (a) Each credit union having assets of **\$10 [\$5]** million or greater shall:
 - (1) prepare and maintain, on an accrual basis, accurate and complete records of its business transactions in accordance with generally accepted accounting principles, except as otherwise directed by regulatory requirements; and
 - (2) prepare its financial statements and reports, including reports to the members, board of directors, management and the department, in accordance with generally accepted accounting principles, except as otherwise directed by regulatory requirements.
- (b) Credit unions having assets of less than **\$10 [\$5]** million may use **another [an other]** comprehensive basis of accounting.
- (c) In addition to the quarterly report to the department as prescribed by the Act, the commissioner may require from all credit unions or from selected categories of credit unions other financial and statistical reports relating to financial condition and accounting practices.

RESERVE REQUIREMENTS

E. (3) Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter I, Section 91.901 (Reserve Requirements).

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the Texas Register the proposed amendments to Rule 91.901. No comments were received regarding the proposed amendments.

The purpose of the proposed amendments is to amend the states reserve requirements relative to institutions whose net worth falls below 7% to align with requirements recently amended by the National Credit Union Administration and found in NCUA Rules and Regulations 12 CFR Part 702.106. The amendments would require such institutions to increase “net worth” instead of the current “net worth reserves” and simplify the calculation of the amount of required earning retention by providing only a quarterly measurement regardless of the period the credit union pays dividends. The proposed changes would ensure state requirements would simplify the interaction of federal and state law relative to credit unions needing to comply with this provision.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the amendments as previously published.

RECOMMENDED MOTION: I move that the Commission adopt the proposed amendments to 7 TAC Section 91.901 without changes to the proposed text as published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter I, Section 91.901, concerning reserve requirements, without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3609). The amendments will not be republished.

The purpose of the proposed amendments is to amend the states reserve requirements relative to institutions whose net worth falls below 7% to align with requirements recently amended by the National Credit Union Administration and found in NCUA Rules and Regulations 12 CFR Part 702.106. The amendments would require such institutions to increase “net worth” instead of the current “net worth reserves” and simplify the calculation of the amount of required earning retention by providing only a quarterly measurement regardless of the period the credit union pays dividends. The proposed changes would ensure state requirements would simplify the interaction of federal and state law relative to credit unions needing to comply with this provision.

The proposed amendments include:

Subsection (b)(1) to amend the language requiring a transfer to “net worth” instead of “net worth reserves”. Subsection (b)(1)(A) would be amended to eliminate an alternate calculation of the transfer requirements if the institution pays dividends monthly. Subsection (b)(1)(B) would be eliminated with changes to (b)(1)(A) outlining the required earnings retention transfer is measured quarterly regardless of the period the credit union calculates member dividends.

Subsection (b)(3) is removed to eliminate the reference to a transfer to “regular reserve” eliminate the duplication of the requirement found in (b)(1).

Subsections (b)(4), (b)(5) and (b)(6) are renumbered (b)(3), (b)(4) and (b)(5) respectively due to the elimination of subsection (b)(3).

Subsection (b)(7) eliminates the reference to a financial plan, and a related written agreement from the Department as such written agreements, when initiated, already contain appropriate language.

The Commission received no written comments on the proposed amendments to the rule.

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 of the Finance Code.

The statutory provisions affected by the proposed amendments are Texas Finance Code, Sections 122.104.

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

<rule>

§91.901. Reserve Requirements.

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

(1) Net worth means the retained earnings balance of the credit union as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management, the insuring organization, or the commission. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. Net worth does not include the allowance for loan and lease losses account.

(2) Net worth ratio means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(3) Total assets means the average of the total assets as measured using one of the following methods:

(A) Average Quarterly Balance--the average of quarter-end balances of the four most recent calendar quarters; or

(B) Average Monthly Balance--the average of month-end balances over the three calendar months of the calendar quarter; or

(C) Average Daily Balance--the average daily balance over the calendar quarter;

or

(D) Quarter-End Balance--the quarter-end balance of the calendar quarter as reported on the credit union's call report.

(b) In accordance with the requirements of §122.104 of the Act, state-chartered credit unions shall set aside a portion of their current gross income, prior to the declaration or payment of dividends, as follows:

(1) A credit union with a net worth ratio below 7.0% shall increase the dollar amount of its net worth [reserves] by the following amounts at the indicated intervals until its net worth ratio equals 7.0% of total assets.

Regardless of the dividend period, net worth must increase quarterly by an amount equivalent to at least 0.1% per quarter of its total assets.[:]

[(A) in the case of a monthly dividend period, net worth must increase monthly by an amount equivalent to at least 0.0334% of its total assets; and]

[(B)] Regardless of the dividend period, net worth must increase quarterly by an amount equivalent to at least 0.1% per quarter of its total assets.

(2) For a credit union in operation less than ten years and having assets of less than \$10 million, a business plan must be developed that reflects, among other items, net worth projections consistent with the following:

(A) 2.0% net worth ratio by the end of the third year of operation;

(B) 3.5% net worth ratio by the end of the fifth year of operation;

(C) 6.0% net worth ratio by the end of the seventh year of operation; and

(D) 7.0% net worth ratio by the time it reaches \$10 million in total assets or by the end of the tenth year of operation, whichever is shorter.

[(3) Whenever the net worth ratio falls below 7.0%, the credit union shall transfer a portion of its current period net income to its regular reserve in such amounts as described in paragraph (1) of this subsection.]

(3)[(4)] Special reserves. In addition to the regular reserve, special reserves to protect the interest of members may be established by board resolution or by order of the commissioner, from current income or from undivided earnings. In lieu of establishing a special reserve, the commissioner may direct that all or a portion of the undivided earnings and any other reserve fund be restricted. In either case, such directives must be given in writing and state with reasonable specificity the reasons for such directives.

(4)[5] Insuring organization's capital requirements. As applicable, a credit union shall also comply with any and all net worth or capital requirements imposed by an insuring organization as a condition to maintaining insurance on share and deposit accounts. For federally-insured credit unions this includes all prompt corrective action requirements contained within Part 702 of the NCUA Rules and Regulations.

(5)[6] Decrease in Required Reserve Transfer. The commissioner, on a case-by-case basis, and after receipt of a written application, may permit a credit union to transfer an amount that is less than the amount required under paragraph (1) of this subsection. A credit union shall submit such statements and reports as the commissioner may, in his discretion, require in support of a decreased transfer request. The application must be received no later than 14 days before the quarter end and shall include but not be limited to:

- (A) an explanation of the need for the reduced transfer amount;
- (B) financial statement reflecting the fiscal impact of the required transfer; and
- (C) documentation supporting the credit union's ability to resume the required transfer at a future date certain.

[(7) Financial Plan. A credit union that is not capable of making the prescribed reserve transfer under paragraph (1) of this subsection for three consecutive quarters, shall file a written financial plan detailing a quarterly timetable of steps the credit union will take to increase its net worth ratio and fully comply with this section in the future. A credit union shall file and implement the financial plan within 45 days of the triggering quarter end date. A credit union may, after prior written notice to the Department, amend its financial plan to reflect a change in circumstances. Failure to meet the terms of the financial plan may be considered a violation of a written agreement with the commissioner under §122.255 of the Finance Code.]

(c) Revised business plan for new credit unions. A credit union that has been in operation for less than ten years and has assets of less than \$10 million shall file a written revised business plan within 30 calendar days of the date the credit union's net worth ratio has failed to increase consistent with its current business plan. Failure to submit a revised business plan, or submission of a plan not adequate to either increase net worth or increase net worth within a reasonable time; or failure of the credit union to implement its revised business plan, may trigger the regulatory actions described in subsection (b)(4) of this section.

(d) Unsafe practice. Any credit union which has less than a 6.0% net worth ratio may be deemed to be engaged in an unsafe practice pursuant to §122.255 of the Finance Code. The determination may be abated if, the credit union has entered into and is in compliance with a written agreement or order with the department or is in compliance with a net worth restoration or revised business plan approved by the department to increase its net worth ratio. If a credit union has a net worth ratio below 6.0% or is otherwise engaged in an unsafe practice, the

department may impose the following administrative sanctions in addition to, or in lieu of, any other authorized supervisory action:

(1) all unencumbered reserves, undivided earnings, and current earnings are encumbered as special reserves;

(2) dividends and interest refunds may not be declared, advertised, or paid without the prior written approval of the commissioner; and

(e) any changes to the credit union's board of directors or senior management staff must receive the prior written approval of the commissioner. Supervisory action. Notwithstanding any requirements in this section, the department may take enforcement action against a credit union with capital above the minimum requirement if the credit union's circumstances indicate such action would be appropriate.

VENDOR PROTESTS

E. (4) Adoption of Proposed New Rule 7 TAC, Part 6, Chapter 97, Subchapter C, Section 97.208 (Vendor Protests).

BACKGROUND: At its June meeting, the Commission approved for publication and comment in the Texas Register the proposed amendments to new Rule 97.208. No comments were received regarding the proposed amendments.

The purpose of the proposed rule is to set forth the Department's procedures for resolving vendor protests relating to purchases as required by Texas Government Code Section 2155.076, adoption of the procurement rules of the Texas Comptroller of Public accounts pursuant to Texas Government Code Section 2156.005(d) and the negotiation and mediation of a claim for breach of contract as required by Texas Government Code Section 2260.052(c). The Commission proposes this new rule to replace any formal or informal policies or procedures governing the resolution of contract disputes and to carry out the requirements of Texas Government Code Sections 2155.076 and §2156.005(d), and Texas Government Code Chapter 2260.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the amendments as previously published.

RECOMMENDED MOTION: I move that the Commission adopt the proposed amendments to new **7 TAC Section 97.208** without changes to the proposed text as published in the *Texas Register*.

The Credit Union Commission (the Commission) adopts the new rule to Texas Administrative Code, Title 7, Chapter 97, Subchapter C, Section 97.208, concerning Vendor Protests, without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3611). The amendments will not be republished.

The purpose of the proposed rule is to set forth the Department's procedures for resolving vendor protests relating to purchases as required by Texas Government Code Section 2155.076, adoption of the procurement rules of the Texas Comptroller of Public accounts pursuant to Texas Government Code Section 2156.005(d) and the negotiation and mediation of a claim for breach of contract as required by Texas Government Code Section 2260.052(c). The Commission proposes this new rule to replace any formal or informal policies or procedures governing the resolution of contract disputes and to carry out the requirements of Texas Government Code Sections 2155.076 and §2156.005(d), and Texas Government Code Chapter 2260.

Section (a) outlines the purpose of the proposed rule.

Section (b) provides for definitions of language used within the proposed rule.

Section (c) outlines the types of protests accepted and defines who may initiate a protest.

Section (d) exempts grants, subcontracts, interagency and interlocal agreements from the proposed rule.

Section (e) confirms that protests under the proposed rule are not considered contested cases under the Administrative Procedure Act.

Section (f) outlines the deadline for filing a protest under the proposed rule.

Section (g) provides information on how to submit a protest.

Section (h) outlines the Department's requirements for consideration of a protest.

Section (i) outlines Department personnel responsible for considering a protest.

Section (j) outlines possible mutual agreement to resolve a protest.

Section (k) provides the authority for the assigned personnel to confer with the Department's General Counsel regarding a protest.

Section (l) outlines possible findings by Department personnel responsible to review a protest.

Section (m) outlines the Department personnel responsible for reviewing an appeal of the Department's findings on a protest as well as outlining the appeal process.

Section (n) provides the authority to move forward on a protested contract only under a determination that a contract must be awarded without delay to protect the interests of the Department.

Section (o) outlines the document retention requirements of the protest and appeal process.

Section (p) adopts by reference the rules of the Texas Comptroller of Public Accounts, Statewide Procurement and Support Services in Texas Administrative Code Sections 20.207 and 20.208 (related to Competitive Sealed Bidding and Competitive Sealed Proposals) pursuant to Texas Government Code Section 2156.005(d).

Section (q) adopts by reference the rules of the Office of Attorney General of Texas in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes) pursuant to Texas Government Code Section 2260.052(c).

The Commission received no written comments on the proposed amendments to the rule.

The rule is proposed under Texas Government Code Sections 2155.076, 2156.005(d) and 2260.052(c), which authorizes the Commission to adopt reasonable rules relating to procurement process and resolving vendor protests.

The statutory provision affected by the proposed amendments is Texas Finance Code, Sections 2155.076, 2156.005(d) and 2260.052(c).

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

<rule>

§97.208. Vendor Protests.

(a) The purpose of this rule is to set forth the Department's procedures for resolving vendor protests relating to purchases as required by Texas Government Code Sections 2155.076 and 2260.052(c), and the adoption of rules of the Texas Comptroller of Public Accounts pursuant to Texas Government Code Section 2156.005(d).

(b) The following words, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Commissioner--The Commissioner of the Credit Union Department, State of Texas.

(2) Department--The Credit Union Department, State of Texas.

(3) Deputy Commissioner--The Deputy Commissioner of the Credit Union Department, State of Texas.

(4) General Counsel--The General Counsel of the Credit Union Department, State of Texas.

Interested parties--All vendors who have submitted bids or proposals for the provision of goods or services to the Credit Union Department, State of Texas.

- (1) the solicitation documents or actions associated with the publication of solicitation documents;
- (2) the evaluation or method of evaluation for a solicitation; or
- (3) the award of a contract.
- (d) This section does not apply to:
 - (1) the award of grants or subcontracts; or
 - (2) interagency or interlocal agreements executed in accordance with applicable law.
- (e) The Department will not consider protests filed pursuant to this section as contested cases under the Administrative Procedure Act, Texas Government Code, Chapter 2001.
- (f) To be considered timely, the protest must be in writing, sworn to, and received by the Department:
 - (1) no later than the date that responses to a solicitation are due, if the protest concerns the solicitation;
 - (2) no later than the date a contract resulting from the solicitation is awarded, if the protest concerns the evaluation or method of evaluation for the solicitation; or
 - (3) no later than 10 days after the notice of award of a contract is posted, if the protest concerns the award.
- (g) The protesting vendor must file a protest with the Department by electronic mail submission to CUDDeputyCommissionerProtests@tud.texas.gov for review by the Deputy Commissioner.
- (h) In addition to being in writing, sworn to, and timely, to be considered by the Department, a protest must contain:
 - (1) a specific statute or regulation the protesting vendor alleges the solicitation, contract award, or tentative award violated;
 - (2) a specific description of each action by the Department that the protesting vendor alleges is a violation of the statutory or regulatory provision;
 - (3) a precise statement of relevant facts including:
 - (i) sufficient documentation to establish that the protest has been timely filed;
 - (ii) a description of the adverse impact to the Department and the state; and
 - (iii) a description of the resulting adverse impact to the protesting vendor;
 - (4) a statement of any issues of law or fact that the protesting vendor contends must be resolved;
 - (5) a statement of the argument and authorities that the protesting vendor offers in support of the protest;
 - (6) an explanation of the subsequent action the protesting vendor is requesting; and
 - (7) sworn statement that copies of the protest have been provided to the Department and all other identifiable interested parties by either hard-copy or electronic means.
- (i) The Deputy Commissioner may settle and resolve the dispute over the solicitation or the award of the contract at any time before the matter is submitted on appeal to the Commissioner.
- (j) Upon receipt of a protest, the Deputy Commissioner may:
 - (1) solicit written responses to the protest from other interested parties;
 - (2) attempt to resolve the protest by mutual agreement; or
 - (3) dismiss the protest if:
 - (A) it is not timely; or
 - (B) it does not meet the requirements of this section.

(k) The Deputy Commissioner may confer with the General Counsel at any time during the review of the protest.

(l) If the protest is not resolved by mutual agreement, the Deputy Commissioner will issue a written determination that resolves the protest.

(1) If the Deputy Commissioner determines that no violation of statutory or regulatory provisions has occurred, then the Deputy Commissioner shall inform the protesting vendor, the Department, and other interested parties by letter that details the reasons for the determination.

(2) If the Deputy Commissioner determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the Deputy Commissioner shall inform the protesting vendor, the Department, and other interested parties of the determination by letter that details the reasons for the determination and the appropriate remedy.

(3) If the Deputy Commissioner determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the Deputy Commissioner shall inform the protesting vendor, the Department, and other interested parties of that determination by letter that details the reasons for the determination. This letter may describe appropriate remedial action including, but not limited to, concluding the contract is void; terminating the contract; and readvertising the solicitation.

(4) The Deputy Commissioner's written determination is the final administrative action by the Department on a protest filed under this subchapter unless the protesting vendor files an appeal of determination under subsection (m) of this section.

(m) The protesting vendor may appeal the Deputy Commissioner's determination on a protest to the Commissioner. An appeal of the Deputy Commissioner's determination must be in writing, sent by electronic mail submission to CUDCommissionerProtests@tud.texas.gov, and received not later than 10 days after the date on which written notification of the Deputy Commissioner's determination was sent to the protesting vendor. The scope of the appeal will be limited to the review of the Deputy Commissioner's determination. With the appeal, the protesting vendor must submit a sworn statement that copies of the appeal have been provided to the Department and all other identifiable interested parties by either hard-copy or electronic means.

(1) An appeal that is not timely filed shall not be considered unless good cause for delay is shown or the Commissioner determines that an appeal raises issues that are significant to the Department's procurement practices or procedures in general.

(2) The Commissioner may confer with the General Counsel at any time during the review of the appeal.

(3) The Commissioner may consider any documents that Department personnel or interested parties have submitted.

(4) The Commissioner will review the appeal of the Deputy Commissioner's determination and render a final decision on the appeal.

(5) A written decision issued by the Commissioner shall be the final administrative action of the Department.

(n) In the event of a properly filed protest under this section, and a contract award has not been made, the Department will not proceed further with the solicitation or award of the contract unless the Commissioner, after consultation with the Deputy Commissioner and General Counsel, makes a written determination that the contract must be awarded without delay, to protect the best interests of the Department.

- (o) The Department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the Department's document retention schedule.
- (p) Pursuant to Texas Government Code Section 2156.005(d), the Department adopts by reference the rules of the Texas Comptroller of Public Accounts, Statewide Procurement and Support Services in 34 TAC § 20.207 and § 20.208 (relating to Competitive Sealed Bidding and Competitive Sealed Proposals).
- (q) Pursuant to Texas Government Code Section 2260.052(c), the Department adopts by reference the rules of the Office of the Attorney General of Texas in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes).

F

LITIGATION UPDATE REGARDING PENDING LITIGATION

F. 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. 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.

G

COMMITTEE REPORTS

G. (1) Report of Actions Taken at the June 10 and September 15, 2022 Committee Meetings; and (2) Report on Status of Commissioner Search.

BACKGROUND: At the June 10, 2022, former Commissioner Kolhoff affirmed his resignation from the Department, amending his resignation date to July 15, 2022. At the same meeting the Commission acted and named Robert Etheridge as the Interim Commissioner, effective July 16, 2022.

Due to the resignation of former Commissioner Kolhoff, the Commissioner Succession Plan became operative and the Commissioner Evaluation Committee (the “Committee”) assumed responsibility for the processes associated with selecting the next commissioner. As part of that responsibility, the Committee is charged with serving as the Commission’s search committee. To fulfill these duties, the Committee met on August 5, 2022, with a subsequent meeting scheduled for September 15, 2022.

At the September 15 Committee meeting, initial interview(s) are scheduled to occur for the candidate(s) selected to fill the vacant Commissioner position. Subsequent to the interview(s), a recommendation will be made to the full Commission for selection of candidates for final interviews.

RECOMMENDED ACTION: I move to adopt the Commissioner Evaluation Committee’s recommendation of whom to interview for the Commissioner position.

H

SEARCH & SELECTION OF NEW CREDIT UNION COMMISSIONER

H. (1) Format of and Questions for Interview for Finalists for Commissioner Position.

BACKGROUND: The Commission will meet to discuss and finalize interview questions for final candidates for the vacant Commissioner position.

This agenda item has been included to allow the commission members an opportunity to discuss and determine the format of and the questions to be used at the final interviews.

RECOMMENDED ACTION: I move that the Commission ask each applicant _____ number of questions during the final interview with the allowance of asking relevant follow-up questions.

SEARCH & SELECTION OF NEW CREDIT UNION COMMISSIONER

H. (2) Interview one or more Finalists for the Position of Credit Union Commissioner.

BACKGROUND: On September 15, 2022, in a public meeting, the Commissioner Evaluation Committee (the Committee) met to interview and consider certain applicants for the Commissioner position. Based upon those interviews and discussion, the Committee has referred for interview by the full Commission candidate(s) for possible appointment as the next Credit Union Commissioner.

It is anticipated the Commission will conduct final interviews based on the Commissioner Evaluation Committee recommendation(s).

RECOMMENDED ACTION: No formal action is necessary.

**MATTERS RELATED TO THE SEARCH AND SELECTION OF A
NEW CREDIT UNION COMMISSIONER**

H. (3) Potential Selection of a New Credit Union Commissioner.

BACKGROUND: The Commission may act, based upon the final interviews, to formally select a candidate to be offered the Credit Union Commissioner position.

Section 15.301 of the Texas Finance Code prescribes that the Commission shall appoint a Commissioner by affirmative vote of two-thirds of the membership of the Commission.

RECOMMENDED MOTION: I move that _____ be offered the position of Credit Union Commissioner at an annual salary of \$_____.

I

FUTURE COMMISSION MEETING

I. Next Commission Meeting – The next regular meeting of the Commission has been tentatively scheduled for November 4, 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 (2 detail records)	\$ 89,172	14.02	Avg
	Summary for 'Race' = ASIAN (2 detail records)	\$ 89,172	14.02	Avg
BLACK				
	Summary for F (5 detail records)	\$ 95,856	8.64	Avg
	Summary for M (1 detail record)	\$ 90,153	8.41	Avg
	Summary for 'Race' = BLACK (6 detail records)	\$ 94,906	8.60	Avg
HISPA				
	Summary for F (6 detail records)	\$ 62,061	10.34	Avg
	Summary for M (1 detail record)	\$ 111,474	5.56	Avg
	Summary for 'Race' = HISPA (7 detail records)	\$ 69,120	9.65	Avg
MULTI				
	Summary for F (1 detail record)	\$ 43,989	3.32	Avg
	Summary for 'Race' = MULTI (1 detail record)	\$ 43,989	3.32	Avg
WHITE				
	Summary for F (1 detail record)	\$ 123,200	0.92	Avg
	Summary for M (11 detail records)	\$ 80,222	11.35	Avg
	Summary for 'Race' = WHITE (12 detail records)	\$ 83,804	10.48	Avg
TOTALS				
	28	\$ 81,473	9.87	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	16.16	Avg
	Summary for M (1 detail record)	\$ 111,474	5.56	Avg
	Summary for 'Race' = HISPA (4 detail records)	\$ 70,962	13.51	Avg
MULTI				
	Summary for F (1 detail record)	\$ 43,989	3.32	Avg
	Summary for 'Race' = MULTI (1 detail record)	\$ 43,989	3.32	Avg
WHITE				
	Summary for F (1 detail record)	\$ 123,200	0.92	Avg
	Summary for M (4 detail records)	\$ 119,664	13.65	Avg
	Summary for 'Race' = WHITE (5 detail records)	\$ 120,371	11.11	Avg
TOTALS				
	10	\$ 92,969	11.29	Avg

TEXAS CREDIT UNION DEPARTMENT

Average Salary and Tenure by Race and Sex (FIELD STAFF)

Race	Sex	Annual Salary	Tenure	
ASIAN				
	Summary for M (2 detail records)	\$ 89,172	14.02	Avg
	Summary for 'Race' = ASIAN (2 detail records)	\$ 89,172	14.02	Avg
BLACK				
	Summary for F (5 detail records)	\$ 95,856	8.64	Avg
	Summary for M (1 detail record)	\$ 90,153	8.41	Avg
	Summary for 'Race' = BLACK (6 detail records)	\$ 94,906	8.60	Avg
HISPA				
	Summary for F (3 detail records)	\$ 66,664	4.51	Avg
	Summary for 'Race' = HISPA (3 detail records)	\$ 66,664	4.51	Avg
WHITE				
	Summary for M (7 detail records)	\$ 57,684	10.03	Avg
	Summary for 'Race' = WHITE (7 detail records)	\$ 57,684	10.03	Avg
TOTALS				
	18	\$ 75,087	9.08	Avg

Credit Union Department

Executive Summary

As of 02/28/22

*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	175			
Total Assets (Millions)	*48,620	*54,218	*55,205	*56,151			
APPLICATIONS (Received)							
Charters	0	0	0	0			0
Foreign Branches	1	2	0	0			0
Conversions	0	0	2	0			2
Mergers	6	3	2	4			6
Bylaws	77	97	15	15			30
Articles of Incorporation	6	1	1	1			2
Total	90	103	20	20	0	0	40
EXAMINATION ACTIVITIES							
Regular	113	80	26	13			39
Joint	49	64	14	14			28
Remedial	30	26	9	7			16
Total	192	170	49	34	0	0	83
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	2	0	0	0			
LUAs	0	0	0	0			
Cease & Desist Orders	1	3	3	3			
Dividend Restrictions	0	0	0	0			
Conservatorships	0	1	1	1			
Liquidations	1	1	1	1			
Total	4	5	5	5	0	0	
PERSONNEL STAFFING							
Field Examiners	18	17	16	18			
Total Personnel	29	28	27	29			
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	4,446	4,256	1,238	1,186			2,424
Actual Expenditures	3,898	3,588	959	908			1,867
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	0			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	0			
Add: New Applications Filed	0	0	0	0			
Less: Approved	0	0	0	0			
Denied/Withdrawn	0	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	2			
Add: New Applications Filed	1	1	1	0			
Less: Approved	0	0	0	0			
Denied/Withdrawn	0	0	0	0			
Pending at End of Period	1	1	2	2	0	0	
CONVERSIONS							
Pending at Beginning of Period	0	0	0	2			
Add: Applications Filed	0	0	2	0			
Less: Approved	0	0	0	0			
Denied/Withdrawn	0	0	0	0			
Pending at End of Period	0	0	2	2	0	0	
MERGERS							
Pending at Beginning of Period	5	2	3	3			
Add: Applications Filed	1	1	2	4			
Less: Approved	0	0	2	1			
Denied/Withdrawn	4	0	0	0			
Pending at End of Period	2	3	3	6	0	0	
BYLAWS							
Pending at Beginning of Period	6	6	12	6			
Add: Applications Filed	21	21	15	15			
Less: Approved	14	14	21	20			
Denied/Withdrawn	1	1	0	1			
Pending at End of Period	12	12	6	0	0	0	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	0	0	0	0			
Add: Applications Filed	1	0	0	1			
Less: Approved	0	0	0	1			
Denied/Withdrawn	0	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	42			
2	101	111	107	109			
3	18	17	20	20			
4	3	1	2	2			
5	0	2	2	2			
Total	177	175	175	175	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 02/28/2022
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	40	13	65%	7%	100%
Joint	26	14	108%	8%	100%
Remedial	14	7	100%	4%	100%
Total	80	34	85%	21%	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	83			151
Closed	344	323	60	92			152
Avg. Days to Process	16.75	15.25	14	26			20
% Resolved in 30 Days	97%	99%	98%	97%			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	2			10
Denial	0	0					0
Loan Issues	11	1		5			5
Credit Report Issues	46	54	11	29			40
Insurance - CPI, GAAP, Property, etc	1	6	1	1			2
ACCOUNT ISSUES							
Discrimination	2	3		1			1
Electronic Funds Transfer	21	22	2	3			5
Holds on Checks	12	14	2	2			4
Estate/Probate	0	0					0
Fraud/Unauthorized	38	54	12	13			25
Fees	25	22	5	10			15
Billing Disputes	15	31	6	2			8
Other	57	26	1	10			11
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	32	10	3	4			7
Account Closed/Frozen	11	20	1	5			6
Customer Service	40	38	6	3			9
Deceptive Advertisment	4	0		1			1
Vehicle Title	5	7	2	1			3
Website Issues	9	0					0
TOTAL	344	323	60	92	0	0	152

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			2
State-to-Federal	2	0					0
Total	7	2	2	1	0	0	3
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	61,868,243			570,844,091
State-to-Federal	-	-					0
Total	20,949,580	136,790,044	514,217,171	61,868,243	0	0	576,085,414
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 02/28/2022

		Number
Total Visits:		
	Number of Visits	5,001
	Visitors	3,614
	Page Views	9,936
	Number of Repeat Visitors	639
	Average Pages per Visit	1.99
	Average Visit Duration	1m41s
	New Visitors	
Most Requested Pages:		
	Home	3,126
	Texas Rules for Credit Unions	849
	Job Postings	476
	Texas Finance Code	366
	Frequently Asked Questions	353
Most Downloaded Files:		
	Legal Assistant III Job Announcement	4
	Instructions to Submitting Job Application	3
	Financial Examiner I Posting	3
	State of Texas Job Application	3
	Complaint Form	2