



# CREDIT UNION COMMISSION MEETING

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

**November 4, 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](http://www.cud.texas.gov) on the day of the meeting, November 4, 2022 at 9:00 a.m.

An electronic copy of the agenda is now available at [www.cud.texas.gov](http://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 November 18, 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***

- ***Michael S. Riepen***
- ***Robert W. Etheridge***
- ***Joel Arevalo***
- ***Isabel Velasquez***

B

## **CREDIT UNION COMMISSION MEETING MINUTES**

Draft copies of the minutes for the September 16, 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 September 16, 2022 be approved as presented.

## **CREDIT UNION COMMISSION MEETING MINUTES**

**Credit Union Department Building  
914 East Anderson Lane, Austin, Texas  
September 16, 2022**

**A. CALL TO ORDER** -- Chair Jim Minge called the meeting to order at 9:05 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Texas 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 Interim Commissioner, Robert Etheridge, 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 (**September 2, 2022 TRD#2022005320**).

### **❖ RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES --**

Chair Minge inquired if there were any requests or motions to excuse an absence. Mr. Bleazard moved to excuse commission member Yusuf Farran from the Commission meeting on September 16, 2022. Mrs. Cobb 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 (June 10, 2022)** -- The Chair referred the members to the draft minutes of the previous meeting included in the agenda packet and asked for any proposed edits. Hearing none, the chair asked for

a motion to approve the minutes. Mrs. Cobb moved for approval of the minutes of June 10, 2022 as presented. Mrs. Bayless seconded the motion, and the Commission carried the motion unanimously.

Chair Minge officially announced that under the Texas Open Meetings Act, Chapter 551 of the Texas Government Code the Commission may enter into Executive Session to discuss both agenda items G1 and G2. Agenda items H2 and H3 would be discussed together as well.

Chair Minge thanked the Commissioner Evaluation Committee, especially Karyn Brownlee, who put a lot of work into this process in a very short timeframe. He also thanked the Interim Commissioner, Nancy Elmilady and especially Isabel Velasquez, who was our quarterback for all this and did a great job.

Mrs. Brownlee, Chair of the Commissioner Evaluation Committee, reported on the highlights to fulfill the expectations and the succession plan; and to build succession plan as soon as possible on actions taken at the June 10 and September 15, 2022, meetings. Furthermore, Mrs. Brownlee reported that on August 5, 2022, the Committee had a public meeting to further the succession plan; and that there are two candidates being recommended for interviews by the Commissioner Evaluation Committee.

Chair Minge stated that the Commission would be entering into Executive Session as provided under Section 551.074 of the Texas Government Code to deliberate on personnel matters in this agenda item. The Commission entered Executive Session at 9:10 a.m.

At 9:16 a.m., the Commission returned to open session. Chair Minge inquired if there were any members who wished to bring forth any motion. Ms. Merket moved to approve the Committee recommendation for whom to interview for the



Commissioner's position. Mr. Shurtz seconded the motion, and the motion was unanimously adopted.

**C. DEPARTMENT'S FY 2022 BUDGET AND FINANCIAL PERFORMANCE** – Interim Commissioner Etheridge 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 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. Mr. Etheridge further reported that those 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. Mr. Etheridge reported that the significant costs savings realized for FY 2022 was due primarily to travel related savings as a result of a reduction of on-site examination work, and personnel savings due to vacancies.

After a brief discussion, the Commission took no action.

**D. STATE CREDIT UNION SYSTEM** – Interim Commissioner Etheridge briefly indicated 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% 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-agriculture jobs, a new Texas record, and approximately 465,000 jobs more than the pre-pandemic levels in February 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 financial performance of Texas chartered 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. Earnings performance data for Texas credit unions reflects that strong net income performance continues to strengthen net worth ratios. Furthermore, 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.

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

#### **E. RULEMAKING REVIEW**

(1) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter E (Direction of Affairs), and Subchapter F (Accounts and Services) and Re-adoption of Rules.** Interim Commissioner Etheridge reported that Section 2001.039, Texas 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 91, Subchapters E (Direction of Affairs); and 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 and scheduled for adoption in the next agenda item. Notice of the review and a request for comments on the rules in this Chapter were published in

the July 29, 2022 issue of the Texas Register. No comments were received regarding the review.

After a short discussion, Mrs. Brownlee moved that the Commission find that the reasons for adopting **7 TAC, Part 6, Chapter 91, Subchapters E (Direction of Affairs); and F (Accounts and Services)** continue to exist and that the Commission readopt these rules. Mr. Shurtz seconded the motion, and the commission carried the motion unanimously.

(2) **Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter E, Section 91.515 (Financial Reporting).** Interim Commissioner Etheridge noted that the purpose of the proposed amendments is 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 GAAP from the current maximum asset size of \$5 million to \$10 million.

After a brief discussion, Mr. Bleazard moved that the Commission adopt the proposed amendments to rule **7 TAC Section 91.515** without changes to the proposed text as published in the *Texas Register*. Ms. Merket seconded the motion, and the commission carried the motion unanimously.

(3) **Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter I, Section 91.901 (Reserve Requirements).** Interim Commissioner Etheridge reported that the proposed amendments are 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 (NCUA) and found in NCUA Rules and Regulations 12 CFR Part 702.106. The requirements 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. Furthermore, the proposed changes would ensure State requirements to simplify the interaction of Federal and State law relative to credit unions needing to comply with this provision.

After a short discussion, Mrs. Bayless moved 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*. Mrs. Cobb seconded the motion, and the Commission carried the motion unanimously.

**(4) Adoption of Proposed New Rule 7 TAC, Part 6, Chapter 97, Subchapter C, Section 97.208 (Vendor Protests).** General Counsel, Nancy Elmilady, reported that 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 is proposing 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 brief discussion, Mr. Shurtz moved 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. Mrs. Brownlee seconded the motion, and the Commission carried the motion unanimously.

**F. LITIGATION UPDATE REGARDING PENDING LITIGATION.**

General Counsel Elmilady gave an update to the Commission. No significant pleadings or public filings have occurred since the last update in June.

After a short discussion, the Commission took no action.

**H. (1) Format of and Questions for Interview for Finalists for Commissioner Position.** Chair Minge stated that the Commission would be entering into Executive Session as provided under Section 551.074 of the Texas Government Code to deliberate on personnel matters in this agenda item. The Commission entered Executive Session at 9:35 a.m.

At 10:24 a.m., the Commission returned to open session. Chair Minge inquired if there were any members who wished to bring forth any motion related to the Commission's discussion in Executive Session. Mrs. Brownlee moved that the Commission ask each applicant a minimum of 8 questions during the final interview with the allowance of asking relevant follow-up questions. Ms. Merket seconded the motion, and the motion was unanimously adopted.

Chair Minge informed the online and public attendees that it is anticipated this agenda item is going to be long. We are not able to give you a specific time of when we were going to reconvene, but we would anticipate that we'll be out for quite a while for this very important decision.

The Commission recessed for lunch at 10:26 a.m., and reconvened at 11:15 a.m. Mrs. Cobb informed the Commission that she will not be able to be in attendance for the rest of the afternoon meeting. Ms. Merket moved to excuse Mrs.

Cobb absence for the duration of the meeting. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

Chair Minge stated that the Commission would be entering into one Executive Session as provided under Section 551.074 of the Texas Government Code to deliberate on personnel matters in agenda items H (2) and H (3) . The Commission entered Executive Session at 11:20 a.m.

At 2:28 p.m., the Commission returned to open session. Chair Minge inquired if there were any members who wished to bring forth any motion related to the Commission's discussion in Executive Session.

Mrs. Brownlee moved that Michael S. Riepen be offered the position of Credit Union Commissioner at an annual salary of \$200,000 with a starting date of October 3, 2022.

Chair Minge reminded the Commission that by statute, the appointment of a Commissioner requires an affirmative vote of two-thirds of the membership of the Commission or, at least six votes in favor of the candidate. Mrs. Swan seconded the motion, and the motion was passed with seven "ayes" and zero "no".

**I. 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 November 4, 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 2:35 p.m.

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Jim Minge  
Chairman

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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 10-24-2022)
<b><u>September 16, 2022</u></b>		
7 TAC, Part 6, Chapter 91 Subchapter E (Direction of Affairs) and Subchapter F (Accounts and Services)	Published in <i>Texas Register</i> as readopted rules.	Published in <i>Texas Register</i> on 09/30/2022.
7 TAC, Part 6, Chapter 91 Section 91.515 (Financial Reporting)	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 09/30/2022.
7 TAC, Part 6, Chapter 91 Subchapter I, Section 91.901 (Reserve Requirements)	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 09/30/2022.
7 TAC, Part 6, Chapter 97 Subchapter C, Section 97.208 Vendor Protests (New Rule)	Published in <i>Texas Register</i> as adopted rule.	Published in <i>Texas Register</i> on 09/30/2022.



C

## **DEPARTMENT'S FY 2023 BUDGET FINANCIAL PERFORMANCE**

### **C. Discussion and Consideration of the Department's FY 2023 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 final FY 2022 financial results for the fiscal year 2022. At the end of August 2022, total expenditures were \$956,269\* or approximately 20 percent 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.

*\*This report was provided to the commission at its September 16, 2022 meeting, based on preliminary figures for total fiscal year-end expenditures. Once closing entries were made for the fiscal year, total expenditures were \$5,508 lower than the preliminary figures first reported.*

*\*\*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 Final

	BY 2022 Budget	BY 2022 YTD Budgeted	BY 2022 YTD Actual	Budget Variance	Percent of YTD Budget
<b>REVENUES:</b>					
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	
<b>Operating Income Subtotal</b>	<b>\$4,843,582</b>	<b>\$4,843,582</b>	<b>\$4,310,772</b>	<b>(\$532,809)</b>	<b>89%</b>
Interest Income (Operating Acct)	\$0	\$0	\$9,819	\$9,819	
Interest Income (Contingency Acct)	\$0	\$0	\$4,778	\$4,778	
<b>TOTAL REVENUES - FUNDS AVAILABLE TO COVER EXPENDITURES</b>	<b>\$4,843,582</b>	<b>\$4,843,582</b>	<b>\$4,325,370</b>	<b>(\$518,212)</b>	<b>89%</b>
<b>EXPENDITURES:</b>					
<b>Personnel Expenses:</b>					
Salaries and Wages	\$2,750,629	\$2,750,629	\$2,525,644	\$224,985	92%
Employee Benefits	\$899,512	\$899,512	\$812,204	\$87,308	90%
<b>Total Personnel Expenses</b>	<b>\$3,650,141</b>	<b>\$3,650,141</b>	<b>\$3,337,848</b>	<b>\$312,293</b>	<b>91%</b>
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	\$13,472	\$13,028	51%
<b>Total Travel Expenses</b>	<b>\$431,573</b>	<b>\$431,573</b>	<b>\$172,705</b>	<b>\$258,867</b>	<b>40%</b>
<b>Other Operating Expenses:</b>					
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	\$31,854	\$27,616	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	\$192,093	(\$53,624)	139%
<b>Total Other Operating Expenses</b>	<b>\$761,869</b>	<b>\$769,650</b>	<b>\$384,541</b>	<b>\$385,109</b>	<b>50%</b>
<b>TOTAL EXPENDITURES</b>	<b>\$4,843,583</b>	<b>\$4,851,364</b>	<b>\$3,895,095</b>	<b>\$956,269</b>	<b>80%</b>
<b>REMAINING FUNDS TO COVER EXPENDITURES (Actuals)</b>			<b>\$430,275</b>		

D

## **COMMITTEE REPORTS**

### **D. (1) (a) FY 2023 Commissioner Performance Evaluation Process and Plan.**

**BACKGROUND:** Commission policy requires that the commissioner's performance evaluation process and plan be approved annually by the Commission.

This agenda item provides the Commission with an opportunity to review and discuss goals and performance objectives for the new commissioner.

**RECOMMENDED MOTION:** I move that the Commission adopt the FY 2023 performance evaluation process and plan for the new commissioner.



## **CREDIT UNION DEPARTMENT COMMISSIONER PERFORMANCE EVALUATION PROCESS**

Per the Texas Credit Union Commission's Policy Manual, the Evaluation Committee will coordinate an annual review of the Credit Union Commissioner's performance. Each annual review will reflect the Commissioner's leadership of the Department during the recently completed Fiscal Year. The purpose of this annual review is to ensure the effective management and oversight of the Texas Credit Union Department, to consider adjustments to the Commissioner's salary, and to set leadership goals with the Commissioner for the ensuing year. The evaluation process will begin at the Fiscal Year end (August 31,) and will culminate at the last regularly scheduled Commission meeting of the calendar year.

This process is fully outlined in this document and is to be updated yearly as necessary and as instructed within. The process includes the Commissioner Performance Evaluation Tool (Parts I-V,) the Commissioner Performance Evaluation Report, and the Commissioner Performance Evaluation Decision (Re: Commissioner Renumeration.)

At the close of the Fiscal Year, the Commissioner shall complete Part I: Self-Evaluation of the Commissioner Performance Evaluation Tool according to the instructions given and shall send all required information in electronic form to the Commission Members by September 30. (The Part I submission shall include at a minimum: completed tables from Parts II and III with FY actual results, self-scores, leadership goal documentation, written reflections, and proposal of new goals.) The Chair of the Evaluation Committee shall communicate with the Commissioner and Executive Assistant to confirm this important step occurs.

After this, the Chair will work with the Executive Assistant to ensure the immediate distribution of this Commissioner Performance Evaluation Process document to all Commission Members for their use. Subsequently, the Commission Members shall refer to the Commissioner's submission of Part I: Self-Evaluation to individually complete Parts II, III and IV. They may choose to also use any other documentation available to them. Members shall return their completed Performance Evaluation Tools Parts II, III and IV directly to the Chair of the Evaluation Committee to provide confidentiality and protect the integrity of this process. Tools shall be sent to the Chair of the Evaluation Committee by October 20.

The Chair of the Evaluation Committee will then compile results in preparation for an annual Evaluation Committee meeting to be held during the week of the last regularly scheduled Commission meeting of the calendar year. The Committee shall discuss the results in Executive

Session and prepare two recommendations for the Commission. These shall include: 1) adoption of the Committee's reporting of results for the Commissioner Performance Evaluation, and 2) adoption of the Commissioner Performance Evaluation Process document for the ensuing fiscal year as updated by the Evaluation Committee. These recommendations shall be presented to the Commission for consideration and approval at the last regularly scheduled Commission meeting of the calendar year, typically held in November.

The Commission should address the recommendations above and discuss in Executive Session the Commissioner's Renumeration for the coming year. The Commissioner is the only position at the Department that is exempt from the State's Position Classification Plan. The Credit Union Commission has sole authority to determine the salary for this position. It is prudent for the Commission to make current salary comparisons through reports such as the State Auditor's Office August 2020 Report on Executive Compensation at State Agencies (Report No. 20-706) and comparable salary information of selected positions at state and federal regulatory agencies with similar responsibilities. Currently, the Commissioner's salary state position classification is 6.

The Chair of the Evaluation Committee will meet with the Commissioner immediately following the Commission Meeting for necessary signatures and ensure appropriate filing of documents. The Commissioner and Executive Assistant will send the required copies to the appropriate individuals and departments. The originals shall be kept on file at the Department.

**CREDIT UNION DEPARTMENT**  
**COMMISSIONER PERFORMANCE EVALUATION TOOL**  
**Credit Union Commissioner: Mike Riepen**  
**Fiscal Year of Evaluation: September 1, 2022-August 31, 2023**

**Part I. Self-Evaluation (Must be completed by Commissioner)**

**A. Documentation**

Review and respond to Part II: Objective Evaluation. Complete Table A with actual results for FY 2023 and score your performance using the scoring key provided. Complete Table B by scoring yourself on each leadership goal, noting what type of documentation you are including with your submission. All data and documentation, as well as your self-scores, will be reviewed by each Commission Member as they complete their individual evaluation of your performance.

**B. Reflection**

Review and respond to Part III: Subjective Evaluation. Score your performance using the scoring key provided. Choose 2-3 items in each of the three sections and provide written reflections. This is your opportunity to explain your reasoning for the scores you have given yourself. You may provide additional documentation or information if you choose, but it is not required. Your self-scores, written reflections and any additional documentation will be reviewed by each Commission Member as they complete their individual evaluation of your performance.

**C. Projection**

Write at least three or more leadership goals for the ensuing fiscal year for the Evaluation Committee's consideration.

First, consider these guiding questions and others that may come to mind. You may share your written thoughts with the committee or keep them to yourself.

- What are the top five priorities of the Department at present?
- What are the needs of your staff?
- What obstacles did you encounter this year?
- How can your leadership style be improved and made more effective?
- Are there any books or professional development programs you would like to pursue?

After reflecting on the questions above, propose your new leadership goals for next year. The Committee will review your input as they prepare their recommendations to the Commission.



Write your proposed goals with the starter, “The Commissioner will...”

- ✓ What leadership goals would you propose for yourself for FY 2024? (Minimum 3)

## Part II. Objective Evaluation (65%)

### Scoring of Goals and Measured Objectives:

- 3 = Goal/obj was exceeded
- 2 = Goal/obj was achieved
- 1 = Goal/obj was partially achieved
- 0 = Goal/obj was not achieved

### A. Performance Measures from FY 2023 Annual Operating Plan & Budget

Measured Objective	Target	FY Actual	Score
<b>Strategic Goal 1</b>			
Percentage of credit unions receiving regular examination annually	75%		
Percentage of applications approved or denied within 60 days	100%		
Percentage of credit unions with composite CAMEL ratings of 1 or 2	85%		
Percentage of assets held in credit unions with CAMEL ratings of 1 or 2	95%		
Percentage of credit unions that are "Well Capitalized" as defined by federal statute	95%		
Percentage of reports mailed to credit unions within 25 days	98%		
Percentage of total available work time utilized to conduct both regular and remedial examination work (aka E-Time Ratio)	65%		
Assets examined per examiner day	\$17.6 million		
Average time to complete analysis of quarterly financial data (after the submittal deadline for the most recent 5300 Call Report)	within 40 days		
<b>Strategic Goal 2</b>			
Percentage of rule changes provided to credit unions within 60 days after adoption	100%		
Percentage of interpretations/opinions issued within 30 days	100%		
<b>Strategic Goal 3</b>			
Percentage of complaints responded to within 30 days	95%		
<b>Strategic Goal 4</b>			
Percentage of exam related travel cost reduced by remote work	20%		
Annual examiner turnover rate	16%		
Average regulated assets per examiner (billions)	\$3.0 billion		
Percentage of purchases made from HUB vendors*:			
Professional Services	23.7%		
Other Services	26.0%		

Commodities <i>*Three percentages reported but scored as one measure</i>	21.1%		
Percentage of credit unions indicating quality service annually	90%		
Staffing level	95%		
Number of jobs fairs attended	2		
Turnover ratio (excluding retirements)	Less than 15%		
Accreditation by NASCUS Maintained in Good Standing	Yes		
Total Department costs relative to every \$100,000 in assets regulated	\$9.44		
<b>Average Score (Total divided by 22)</b>			

**B. FY 2023 Leadership Goals**

Goal	Documentation Included with Self-Evaluation (list (i.e., chart, certificate, summary, agenda, pictures, etc.))	Score
1. The Commissioner will...		
2. The Commissioner will...		
3. The Commissioner will...		
<b>Average Score (Total divided by 3)</b>		

<b>Overall Average Score for All Goals and Measured Objectives (Total Averages divided by 2)</b>	
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### Part III. Subjective Evaluation (35%)

#### Rating of Performance Behaviors:

3 = Exceeds expectations: Superior performance that consistently exceeds expectations.

2 = Meets expectations: Performance consistently meets and sometimes exceeds expectations.

1 = Below expectations: Performance may meet some expectations for the position, but improvement is necessary to move expectation to a satisfactory level.

0 = Does not meet expectations: Overall performance is unsatisfactory in all or most expectations.

#### A. Leadership

<b>Leadership Performance Behavior</b>	<b>Score</b>
1. Oversees the state credit union system and overall operation of the Department to ensure it is safe, sound, and competitive.	
2. Demonstrates expertise of the credit union industry, incl. state and federal statutory frameworks, applicable laws and regulations, and issues surrounding the industry.	
3. Identifies and proposes plans for strategic long-term goals so to fulfill the mission of the Department, cost-effectively and in compliance with all applicable laws and policies.	
4. Actively participates in regional and national meetings with federal regulators and in regulatory associations such as NASCUS.	
5. Ensures the Department is effectively staffed, and that staff are properly supervised, developed, and motivated to achieve their goals.	
6. Evaluates and proposes statutory and rule changes to promote the safety, competitiveness, and viability of Texas state-chartered credit unions.	
7. Reviews and revises Department policies and programs with sufficient frequency to ensure all internal and external policies and programs are current and appropriate.	
8. Represents the Department as a capable, dependable leader with great professionalism and integrity who has high standards for self as well as subordinates.	
9. Leads worthwhile, effective initiatives to ensure the viability of the Texas charter.	
<b>Average Score (Total divided by 9)</b>	

#### B. Financial Management

<b>Financial Management Performance Behavior</b>	<b>Score</b>
1. Develops and submits an appropriate annual budget for review and approval by the Commission.	
2. Monitors the status of the annual budget with effective frequency and detail.	
3. Keeps the Commission timely informed of significant deviations from the budget.	
4. Oversees all Department funds, financial activities, and funding requests so to assure the Department maintains a good financial position.	
5. Ensures integrity and fiscal responsibility by all staff involved in revenue collections and expenditures.	
6. Provides timely and effective written financial reports to the Commission.	
7. Demonstrates good judgment in financial decisions, ensuring expenditures are necessary, prudent, and within budgetary constraints.	
<b>Average Score (Total divided by 7)</b>	

### C. Communication

<b>Communication Performance Behavior</b>	<b>Score</b>
1. Demonstrates the abilities to gain the respect of others, to be persuasive and to motivate others to a desired objective in difficult circumstances.	
2. Takes the initiative in interpreting programs to the Commission, in suggesting new ideas or plans, and in presenting matters for consideration.	
3. Maintains cohesive relationships and open communication with Commission members, staff, and other credit union leaders within the state and across state lines.	
4. Keeps the Commission informed of the financial condition and future needs of the Department and informs the Commission of potential problems in a timely manner.	
5. Keeps the Commission continuously informed of the functions of the Department and provides routine reports of the Department's programs and performance.	
6. Notifies the Commission of conservation orders and, immediately, of any request for a hearing to appeal a conservation order.	
7. Communicates well with the public, the media, various trade groups and associations, and when appropriate, the Legislature and Governor's office.	
8. Communicates effectively with the League and Coalition in a timely and appropriate manner, using a variety of communication measures.	
9. Promotes a positive organizational culture of mutual respect, service, teamwork, and care.	
10. Handles complaints, conflicts, issues, and concerns in a timely and professional manner.	
<b>Average Score (Total divided by 10)</b>	

<b>Overall Average Score for All Performance Behaviors (Total Averages divided by 3)</b>	
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## **Part IV. Additional Feedback**

### **A. Commendations/Comments**

Write a few sentences summing up your view of the Commissioner's performance for the past fiscal year. Highlight specific accomplishments or areas. Attention to strengths is appreciated. Note any suggestions for individual or Department improvement or changes for the future.

**B. Possible Goals for Next Year**

Write any suggestions for possible leadership goals for the Commissioner for the ensuing year. Examples of annual goals: (a) projects that move the Department to a more automated environment, (b) professional development for the Commissioner or staff, (c) strategies for increasing efficiency and effectiveness.

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Commission Member's Printed Name

---

Commission Member's Signature

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Date of Completion

## Part V. Final Steps

There are four final steps in the Commissioner Performance Evaluation Process to be completed by the Chair of the Evaluation Committee in conjunction with the Commission and their approval.

First, the Chair will compile the information, calculate the results, and complete the Commissioner Performance Evaluation Report. The Chair will bring this completed report to the Evaluation Committee in Executive Session for their review. Upon their decision, the Chair will then present these results to the entire Commission at the end-of-year Commission Meeting and share the committee's recommendation for their approval.

Second, the Chair, in collaboration with the Evaluation Committee, will update the Commissioner Performance Evaluation Process document for the subsequent Fiscal Year, revising appropriate dates and addressing specific items in its Tool. The Commissioner Performance Evaluation Tool shall be updated to reflect the leadership goals recommended by the Committee and approved by the Commission. It shall also be updated to modify the internal measure target percentages as needed from the new fiscal year budget; (this budget was previously approved by the Commission at the summer meeting.) The committee should also review the wording in the entire Process document and consider any revisions to improve these procedures.

Third, the Chair will complete the form, Commissioner Performance Evaluation Decision – Commissioner Renumeration. This will be completed after the end-of-year Commission Meeting to reflect the Commission's official decision.

Finally, the Chair will meet privately with the Commissioner immediately following the end-of-year Commission Meeting for the necessary signatures. The Chair will communicate with the Commissioner and Executive Secretary to ensure each of these documents is filed appropriately and the state takes necessary action regarding any changes to remuneration. The originals shall be kept on file at the Department.





**CREDIT UNION DEPARTMENT**  
**COMMISSIONER PERFORMANCE EVALUATION REPORT**  
**Fiscal Year of Evaluation: September 1, 2022-August 31, 2023**  
**Credit Union Commissioner: Mike Riepen**

**Part I. Self-Evaluation (Informational)**

- \_\_\_\_\_ Satisfactorily Completed and Submitted on Time
- \_\_\_\_\_ Satisfactorily Completed and Submitted Substantially Late
- \_\_\_\_\_ Not completed

**Part II. Objective Evaluation (65%)**

Total of Commission Members' Part II Overall Average Scores: \_\_\_\_\_

$$\frac{\text{_____}}{\text{(Total from Above)}} \div \frac{9}{\text{(Number of Members)}} = \frac{\text{_____}}{\text{(Part II Average)}}$$

$$\frac{\text{_____}}{\text{(Part II Average)}} \times \frac{65\%}{\text{(Weight)}} = \frac{\text{_____}}{\text{(Part II Score)}}$$

### **Part III. Subjective Evaluation (35%)**

Total of Commission Members' Part III Overall Average Scores: \_\_\_\_\_

$$\frac{\text{_____}}{\text{(Total from Above)}} \div \frac{9}{\text{(Number of Members)}} = \frac{\text{_____}}{\text{(Part III Average)}}$$

$$\frac{\text{_____}}{\text{(Part III Average)}} \times \frac{35\%}{\text{(Weight)}} = \frac{\text{_____}}{\text{(Part III Score)}}$$

### **Part IV. Additional Feedback**

**Part V. Final Evaluation**

\_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_  
(Part II Score) (Part III Score) (Total Score)

\_\_\_\_\_ Clearly Outstanding  
\_\_\_\_\_ Exceeds Expectations  
\_\_\_\_\_ Below Expectations  
\_\_\_\_\_ Unsatisfactory

\_\_\_\_\_  
Evaluation Chair Printed Name

\_\_\_\_\_  
Evaluation Chair Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Commissioner's Printed Name

\_\_\_\_\_  
Commissioner's Signature

\_\_\_\_\_  
Date



**CREDIT UNION DEPARTMENT  
COMMISSIONER PERFORMANCE EVALUATION DECISION  
COMMISSIONER RENUMERATION**

**Fiscal Year of Evaluation: September 1, 2022-August 31, 2023  
Credit Union Commissioner: Mike Riepen**

**Current Salary:** \$ 200,000

**Effective Date:** October 3, 2022

**Pay Adjustment:** \$ \_\_\_\_\_ % \_\_\_\_\_

**Future Salary:** \$ \_\_\_\_\_ **Effective Date:** \_\_\_\_\_

\_\_\_\_\_  
Evaluation Chair Printed Name

\_\_\_\_\_  
Evaluation Chair Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Commissioner's Printed Name

\_\_\_\_\_  
Commissioner's Signature

\_\_\_\_\_  
Date

## **COMMITTEE REPORTS**

### **D. (2) (a) Policy Manual – Proposed Changes to Reserve Policy, Section XX.**

**BACKGROUND:** The proposed changes to the Reserve Policy are a result of a recommended management action made by the Sunset Review Team in their final report issued in August 2020. The recommendation directs the commission to change its Reserve Fund Policy to base the balance of the fund on the Department's budget and expenditures, rather than a fixed amount that may not accurately reflect our long-term needs. The recommended changes to the policy will result in the Reserve Fund balance being evaluated and adjusted during each fiscal year's budgetary process based on the projected budget for the next fiscal year. The changes will also make sure adequate funds are set aside to for an adequate financial cushion, and for major projects, such as building improvements and information technology needs.

**RECOMMENDED ACTION:** The Committee recommends that the Commission approve the proposed revisions and any other changes as necessary.

**RECOMMENDED MOTION:** I move that the Commission approve and adopt the proposed changes to the Reserve Policy, under Section XX of the Commission Policy Manual.

## **COMMITTEE REPORTS**

### **D. (3) (a) State Auditor's Office (SAO) Audit Delegation Request.**

**BACKGROUND:** Section 321.020 of the Texas Government Code requires a state agency seeking to employ a private auditor to audit the agency, to submit to the State Auditor's Office (SAO) a Request for Audit Delegation. The CUD has submitted this request to SAO for purposes of procuring and contracting with an internal auditor for FY2023 and will provide an update on this request.

**RECOMMENDED ACTION:** No action is anticipated.

## **COMMITTEE REPORTS**

### **D. (3) (b) Proposed Internal Auditor Solicitation Request for Qualifications (RFQ).**

**BACKGROUND:** As part of the sunset review process, a recommendation was made asking the CUD to initiate an internal audit program that exceeds statutory requirement for an agency of the CUD's size and nature. Department management and the Commission agreed to implement a program and formed an Audit Committee. The Committee has been working with staff of the CUD to initiate the required procurement process including a Request for Qualifications (RFQ) to procure and contract with such vendor. In FY2022, the CUD solicited bids via RFQ 469-22-001, for which no contract was awarded. Thus, the CUD seeks solicitation for an internal auditor for FY2023, via RFQ 469-23-001.

**RECOMMENDED ACTION:** Approve proposed RFQ for procuring a private internal auditor.

**RECOMMENDED MOTION:** I move that the Commission approve the proposed RFQ to solicit bids for a private internal auditor.

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



E

## **RULEMAKING MATTERS**

One item is 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 H §§91.801, 91.802, 91.803, 91.804, 91.805, 91.808, and 91.809 and Subchapter I §§ 91.901, and 91.902 and Re-adoption of Rules.

**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 H §§91.801, 91.802, 91.803, 91.804, 91.805, 91.808, and 91.809 (Investments), and Subchapter I §§91.901 and 91.902 (Reserves and Dividends) 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 H (Investments), and Subchapter I (Reserves and Dividends)**. Prior to the rule review, the Commission determined that certain changes were necessary for **7 TAC, Section 91.901**, which was published, and scheduled for adoption at the previous commission meeting of September 16, 2022.

Notice of the review and a request for comments on the rules in this chapter was published in the September 30, 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 H (Investments), and Subchapter I (Reserves and Dividends)** continue to exist and that the Commission readopt these rules.

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter H (relating to Investments), of the Texas Administrative Code, Title 7, Part 6, consisting of §§91.801, 91.802, 91.803, 91.804, 91.805, 91.808, and 91.809.

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

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter H, was published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6471). The Department received no comments 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 H. Investments**

### **§91.801. Investments in Credit Union Service Organizations.**

(a) Definitions. As used in this section:

(1) A credit union service organization (CUSO) is an organization whose primary purpose is to strengthen or advance the credit union movement, serve or otherwise assist credit unions or their operations, and provide products or services authorized by this section to credit unions and their members.

(2) An investment in a CUSO includes the following:

(A) an investment in the stock, bonds, debentures, or other equity ownership interest of the CUSO; and

(B) loans granted by a third party to the CUSO which are guaranteed in writing by the credit union.

(3) A financing program is a plan, approved by the credit union's board of directors, that provides for multiple extensions of credit to a CUSO during the regular course of business.

(b) Authority. A credit union by itself, or with other parties, may organize, invest in or make loans to a CUSO only if it is structured and operated in a manner that demonstrates to the public that it maintains a legal existence separate from the credit union. A credit union and a CUSO must operate so that:

(1) their respective business transactions, accounts, and records are not intermingled;

(2) each observes the formalities of its separate corporate or other organizational procedures;

(3) each is adequately capitalized as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) each is held out to the public as a separate and distinct enterprise;

(5) all transactions between them are at arm's length and consistent with sound business practices as to each of them;

(6) unless the credit union has guaranteed a loan to the CUSO, all borrowings by the CUSO indicate that the credit union is not liable; and

(7) their respective activities are in compliance with any licensing or registration requirements imposed by applicable federal or state law.

(c) Notice; Authorization; Supplemental Information; Written Objection.

(1) Required Notice. Before committing to any aggregate investment or loan to a CUSO in an amount greater than 15% of the credit union's net worth, a credit union shall provide at least thirty days' written notice to the commissioner of its intent to make or increase its investment in a CUSO, or make a loan to or enter into a financing program with a CUSO. Subject to the net worth threshold, a credit union shall also provide notice of its intent to engage in additional or substitute activities in an existing CUSO or its intent to materially alter an existing loan or financing program with a CUSO. The written notice shall include as applicable:

(A) a description of the organizational and legal structure of the CUSO and the proposed method of capitalizing the organization;

(B) a description of the loan, including the purpose, terms, guarantors, and collateral;

(C) a description of the products or services to be offered by the CUSO and the customer base it will serve;

(D) an explanation of how the CUSO will primarily serve credit unions or members of credit unions, or how the activities of the CUSO could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union; and



(E) a representation that the activities will be conducted in accordance with applicable law, the requirements of this section, and in a manner that will limit exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO.

(2) Authorization to Proceed. If the commissioner issues a non-objection letter, the credit union may proceed with the proposed transaction when it receives the letter. Otherwise, a credit union may proceed with the proposed transaction or the CUSO may engage in the new activities 30 days after the department receives the required notice, unless the commissioner takes one of the following actions before the expiration of that time period:

(A) the commissioner notifies the credit union that it must file additional information supplementing the required notice. If a credit union is required to file additional information, it may proceed with the proposed transaction or the CUSO may engage in the new activities 30 days after the department receives the requested information, unless the commissioner issues a written objection before the expiration of that time period; or

(B) the commissioner notifies the credit union of an objection to the proposed transaction or new activity.

(3) Request for Supplemental Information. A credit union shall provide any additional information reasonably requested by the commissioner.

(4) Action on a Notice. The commissioner shall object to a proposed transaction or activity if the commissioner finds that:

(A) there is inadequate capital to support the proposed transaction or activity;

(B) the proposed transaction or activity does not comply with this section;

(C) the credit union's concentrated exposures to the CUSO give rise to safety and soundness issues; or

(D) the credit union has regulatory or operational deficiencies which would materially affect its ability to properly and effectively manage and monitor the risk associated with the CUSO.

(5) Written Objection. If the commissioner determines that an objection should be interposed, the commissioner will notify the credit union in writing of the determination and the actions the credit union must take to proceed with the proposed transaction or activity. A credit union receiving notification of an objection may appeal the commissioner's finding to the commission in the manner provided by Chapter 93, Subchapter C of this title (relating to Appeals of Preliminary Determinations on Applications).

(d) Limitations. The board of directors of a credit union that organizes, invests in, or lends to any CUSO shall adopt and maintain written policies, which establish appropriate limits and standards for this type of investment including the maximum amount relative to the credit union's net worth, that will be invested in or loaned to any one CUSO. The maximum amount invested in any one CUSO may not exceed the statutory limit established by Texas Finance Code §124.352(b). Total investments in and total loans to CUSOs shall not, in the aggregate, exceed 10% of the total unconsolidated assets of the credit union, unless the credit union receives the prior written approval of the commissioner. The amount of loans to CUSOs, cosigned, endorsed, or otherwise guaranteed by the credit union, shall be included in the aggregate for the purpose of determining compliance with the limitations of this section.

(e) Prohibitions. No credit union may invest in or make loans to a CUSO:

(1) if any officer, director, committee member, or employee of the credit union or any member of the immediate family of such persons owns or makes an investment in or has made or makes a loan to the CUSO;

(2) unless the organization is structured as a corporation, limited liability company, registered limited liability partnership, or limited partnership;

(3) unless the credit union has obtained written legal advice that the CUSO has been designed in a manner that will limit the credit union's potential exposure to no more than the amount of funds invested in or loaned to the CUSO;

(4) if the CUSO engages in any revenue-producing activity other than the performance of services for credit unions or members of credit unions, and such activity equals or exceeds one half (1/2) of the CUSO's total revenue;

(5) unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO;

(6) unless the CUSO is adequately bonded or insured for its operations;

(7) unless the CUSO obtains an annual opinion audit, by a licensed Certified Public Accountant, on its financial statements in accordance with generally accepted auditing standards, unless the investment in or loan to the CUSO by any one or more credit unions does not exceed \$100,000, or the CUSO is wholly owned and the CUSO is included in the annual consolidated financial statement audit of its parent credit union; or

(8) if any director of the credit union is an employee of the CUSO, or anticipates becoming an employee of the CUSO upon its formation.

(f) Permissible activities and services. The commissioner may, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, a credit union may invest in or loan to a CUSO that is engaged in providing products and services that include, but are not limited to:

(1) operational services including credit and debit card services, cash services, wire transfers, audits, ATM and other EFT services, share draft and check processing and related services, shared service center operations, electronic data processing, development, sale, lease, or servicing of computer hardware and software, alternative methods of financing and related services, other lending related services, and other services or activity, including consulting, related to the routine daily operations of credit unions;

(2) financial services including financial planning and counseling, securities brokerage and dealer activities, estate planning, tax services, insurance services, administering retirement, or deferred compensation and other employee or business benefit plans;

(3) internet-based or related services including sale and delivery of products to credit unions or members of credit unions;

(4) Property management services; or

(5) any other product, service or activity deemed economically beneficial or attractive to credit unions or credit union members if approved, in writing, by the commissioner.

(g) Compensation. A credit union director, senior management employee, or committee member or immediate family member of any such person may not receive any salary, commission, or other income or compensation, either directly or indirectly, from a CUSO affiliated with their credit union, unless received in accordance with a written agreement between the CUSO and the credit union. The agreement shall describe the services to be performed, the rate of compensation (or a description of the method of determining the amount of compensation) and any other provisions deemed desirable by the CUSO and the credit union. The agreement, and any amendments, must be approved by the board of directors of the credit union and the board of directors (or equivalent governing body) of the CUSO prior to any performance of service or payment and annually thereafter. For purposes of this section, senior management employee shall include the chief executive officer, any assistant chief executive officers (vice presidents and above), and the chief financial officer. Immediate family shall include a person's spouse or any other person living in the same household.

(h) Examination fee. If the commissioner requests a CUSO to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). The commissioner may waive the supplemental examination fee or reduce the fee.

(i) Exception. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may make an investment in or make loans to a CUSO that is not limited by the restriction set forth in subsection (e)(4) of this section, provided the activities of the CUSO are limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exception, all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing loan, advance additional funds, or increase the investment in the CUSO without the prior written approval of the commissioner.

(j) Change in Valuation. If the limitations established by this section are reached or exceeded solely because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, divestiture is not required. A credit union may continue to invest up to the limitation without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

#### **§91.802. Other Investments.**

(a) Definitions. Unless the context clearly indicates otherwise, these words and terms, when used in this section, shall have the following meanings. Any technical words, terms, or phrases that are not specifically defined in this section shall be construed in a manner consistent with the Texas Code of Construction Act (*Tex. Govt. Code §311.001*).

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Borrowing repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or (B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(5) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(6) Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(7) Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

(8) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(9) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(10) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include an investment authorized by §124.351(a)(1) of the Texas Finance Code.

(11) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(12) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

(13) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's, Moody's, or Fitch which is recognized by the Securities and Exchange Commission

(14) Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Small business-related securities -- is a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53). This definition does not include Small Business Administration securities permissible under section 107(7) of the Federal Credit Union Act.

(18) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(19) Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review and approve the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized to be purchased.

(2) The aggregate limit on the amount that may be invested in any single investment or investment type, set as a percentage of net worth. This requirement does not apply to certificates of deposit or other accounts issued by a financial institution that are fully insured (including accumulated interest) by either the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) The authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and the internal process for assessing the credentials and previous record of the individual or firm.

(5) The risk management framework given the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) The authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Borrowing repurchase transactions. A credit union may enter into a borrowing repurchase transaction, which is a borrowing transaction subject to §123.201 of the Texas Finance Code, provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) investments referred to in subparagraph (A) of this paragraph mature no later than the maturity date of the borrowing repurchase transaction; and

- (D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO.
- (5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.
- (6) Yankee dollars. A credit union may invest in yankee dollar deposits.
- (7) Eurodollars. A credit union may invest in eurodollar deposits.
- (8) Bankers' acceptance. A credit union may invest in bankers' acceptances.
- (9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or investment activity that is authorized under Texas Finance Code §124.351 and this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.
- (10) U.S. Government-sponsored enterprises. A credit union may invest in obligations of U.S. Government sponsored enterprises such as, for example: the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Farm Credit Bank.
- (11) Commercial paper. A credit union may invest in commercial paper issued by a corporation domiciled within the United States and having a short-term or commercial paper rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.
- (12) Corporate bonds. A credit union may invest in corporate bonds issued by a corporation domiciled in the United States. The bonds must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of seven years or less.
- (13) Municipal bonds. A credit union may invest in municipal bonds rated by a NRSRO in one of the two highest long-term rating categories with remaining maturities of seven years or less.
- (14) Mortgage-related securities. With the exception of the residual interest of the mortgage-related security, a credit union may invest in mortgage-related securities backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home. The security must be rated by a NRSRO in one of the two highest long-term rating categories.
- (15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities which are rated by a NRSRO in one of the two highest long-term rating categories.
- (16) Small business-related securities. A credit union may invest in small business-related securities that represent an interest in one or more promissory notes or leases of personal property evidencing the obligation of a domestic small business concern and originated by a financial institution, insurance company, or similar institution which is regulated and supervised by a Federal or State authority. The securities must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of seven years or less.
- (17) Derivative authority. A credit union may enter into certain derivative transactions exclusively for the purpose of decreasing interest rate risk. The transaction is used to manage risk arising from otherwise permissible credit union activities and not entered into for speculative purposes. Permissible derivatives include interest rate swaps, options on swaps, interest rate caps, interest rate floors, and Treasury futures. Derivative authority is restricted to the provisions outlined under Subpart B of Part 703 of the National Credit Union Administration Rules and Regulations.

(d) Documentation. A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule including:

(1) Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held.

(2) Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider. If a credit union is unable to obtain a price quotation required by this subsection for a particular security, then it can compare prices using nominal or option-adjusted spreads, or spreads to TBA (to-be-announced) mortgage backed securities. This requirement to obtain a price quotation does not apply to new issues purchased at par or at original issue discount.

(3) The reference to and use of NRSRO credit ratings in this rules provides a minimum threshold and is not an endorsement of the quality of the ratings. Credit unions must conduct their own independent credit analyses to determine that each security purchased presents an acceptable credit risk, regardless of the rating.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities regulators and securities industry self-regulatory organizations, such as the Financial Industry Regulatory Authority and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, long-term or counterparty ratings that have been assigned by NRSROs, reports of NRSROs, relevant disclosure documents such as annual independent auditor reports, and other sources of financial information.

(3) Paragraphs (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated

discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an aggregate amount not to exceed 100% of its net worth at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

(h) Investment Practice Permitted to Federal Credit Unions.

If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of management of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority.

If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

- (A) A copy of the credit union's investment policy;
- (B) The higher limit or ratio sought;
- (C) An explanation of the need to raise the limit or ratio; and
- (D) Documentation supporting the credit union's ability to manage this activity;

(2) In determining action on a waiver request made under this subsection, the commissioner will consider the:



(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.

(C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

### **§91.803. Investment Limits and Prohibitions.**

(a) Limitations. Except for deposits placed in a Federal Reserve Bank, a credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation does not apply to the extent that the investment is insured or guaranteed by the United States government, or an agency, sponsored enterprise, corporation, or instrumentality, of the United States government, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation investment.

(b) Designated Depository. As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) Prohibited Activities.

(1) Definitions.

(A) Adjusted trading--selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) Collateralized mortgage obligation (CMO)--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) Commercial mortgage related security--a mortgage related security except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

(D) Fair value--the price at which a security can be bought or sold in a current, arm's length transaction between willing parties, other than in a forced or liquidation sale.

(E) Real estate mortgage investment conduit (REMIC)--a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) Residual interest--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(G) Short sale--the sale of a security not owned by the seller.

(H) Stripped mortgage-backed security--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities.

(I) Zero coupon investment--an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Use financial derivatives for replication, or for any purposes other than hedging;

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities;

(D) Purchase residual interests in CMOs/REMICs, or other structured mortgage backed securities;

(E) Purchase mortgage servicing rights as an investment but may retain mortgage servicing rights on a loan originated by the credit union and sold on the secondary market;

(F) Purchase commercial mortgage related securities of an issuer other than a U.S. Government sponsored enterprise;

(G) Purchase any security that has the capability of becoming a first credit loss piece which supports another more senior security;

(H) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(I) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits;

(J) Purchase securities used as collateral by a safekeeping concern;

(K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in Part 703 of the National Credit Union Administration Rules and Regulations; or

(L) Purchase securities convertible into stock at the option of the issuer.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(A) Board policies approving the activities and establishing limits on them;

(B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(D) Examples of reports the credit union will generate to monitor the activities;

(E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and

(G) The internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, that it has become inconsistent with applicable state or federal law, or that it has ceased to be a safe and prudent practice for one or more credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. The commissioner deems credit unions that continue to engage in investment practices after their authority to do so has been revoked or modified to be engaging in an unsound practice.

#### **§91.804. Custody And Safekeeping.**

(a) A credit union's purchased investments and repurchased collateral must be in its possession, recorded as owned by the credit union through the federal reserve book-entry system, or be held by a board-approved safekeeper under a bailment for hire contract or a custodial arrangement subject to regulation by the Securities and Exchange Commission. Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission or a federal or state financial institution regulatory agency. For the purposes of this section a bailment for hire contract has the same meaning as in §91.802 (relating to Other Investments). Annually, a credit union must analyze the ability of any safekeeper used by the credit union to fulfill its custodial responsibilities, as evidenced by capital strength and financial conditions. The credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations (NRSROs), relevant disclosure documents such as annual independent auditor reports, and other sources of financial information. At least monthly, a credit union must obtain and reconcile a statement of purchased investments and repurchased collateral held in safekeeping.

(b) A credit union that invests funds in a certificate of deposit in a financial institution as defined in §91.802 (relating to Other Investments) shall hold such certificate of deposit in the name of the credit union or, if held by a safekeeper or registered broker-dealer, in the safekeeper's or registered broker-dealer's name as custodial nominee for a credit union. Any certificate of deposit held by a safekeeper or registered broker-dealer as custodial nominee for a credit union or the credit union's registered broker or dealer must be eligible for extended or flow-through insurance coverage to the credit union through either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

### **§91.805. Loan Participation Investments.**

(a) A credit union may purchase a participation interest in a loan, where the borrower is neither a member of the credit union or a member of another participating credit union, as permitted by §124.351(a)(8) of the Texas Finance Code, provided the following conditions are satisfied:

(1) the purchase complies with all regulatory requirements to the same extent as if the credit union had originated the loan;

(2) the originating lender retains at least 10 percent of the outstanding balance of the loan through the life of the loan;

(3) the purchase complies with the credit union's investment policy, which, at a minimum, must:

(A) establish the same degree of independent credit and collateral analysis as if the credit union was the originator; and

(B) establish commitment limits for aggregate purchased participations, out-of-area participations, and loans originated by individual lead institutions.

(4) the written loan participation agreement fully describes the lead institution's responsibilities, establishes requirements for obtaining timely borrower credit information, addresses remedies upon default, and outlines dispute resolution procedures.

(b) Financial Reporting. A participation interest in a non-credit union member loan purchased under this section shall be reported in accordance with generally accepted accounting principles.

(c) Other Requirements. A credit union purchasing a loan participation investment must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

### **§91.808. Reporting Investment Activities to the Board of Directors.**

(a) A credit union shall provide its board of directors a monthly comprehensive report of investment activities, including:

(1) investments purchased and sold during the month;

(2) unrealized market gains or losses compared to book value for each security at month's end;

(3) fair or market value of each security;

(4) total book value of investments outstanding at month's end;

(5) unrecorded and unreported obligations to buy or sell investments; and

(6) amount of investments, other than deposits and investments in designated depositories, that are not either issued by, or fully guaranteed as to principal and interest by, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the United States or any agency, enterprise, corporation, or instrumentality of the United States, or in any trust or trusts established for investing, directly or collectively, in such securities, obligations or instruments.

(b) The credit union shall also provide a quarterly report to the board of directors that summarizes the volatility of the entire security portfolio, if the aggregate amount of securities with one or more of the features included below exceeds the credit union's net worth:

(1) embedded options;

(2) remaining maturities greater than three years; or

(3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) The report described in subsection (b) of this section must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on the:

- (1) fair value of each security in the entire portfolio;
- (2) fair value of the entire security portfolio as a whole; and
- (3) credit union's net worth.

(d) For the purposes of this section, an embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

#### **§91.809. Purchase of Assets and Assumption of Liabilities.**

(a) With approval of the Commissioner, a credit union may initiate a program of purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

- (1) Any credit union
- (2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or
- (3) Any successor in interest to any institution identified in paragraph (1) or (2) of this subsection.

(b) Commissioner approval is not required for:

- (1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under NCUA regulations 12 C.F.R. §701.23(b)(1)(iii) or (iv), or purchases of member loans under §91.711 of this title (relating to Purchase and Sale of Member Loans);
- (2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an insured credit union perfects a security interest in connection with an extension of credit to any member.
- (3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities from any deposit insured credit union, except a purchase or assumption as a part of a merger under §91.1003 of this title (relating to Mergers/Consolidations); or
- (4) Purchases of loan participations as defined in and meeting the requirements of §91.805 of this title (related to Loan Participation Investments).

(c) A credit union seeking approval under subsection (a) of this section must submit a letter application to the commissioner stating the nature of the transaction and describing the proposed program. The application must include:

- (1) Copies of relevant transaction documents;
- (2) The credit union board's resolution approving the credit union to submit the application and engage in the proposed activity;
- (3) Evidence that the credit union board has reviewed and approved the credit union's due diligence efforts;
- (4) Proposed policies under which the program will operate, and which must comply with the requirements outlined in §§91.802(b), 91.803 and 91.808 (relating to Other Investments; Investment Limits and Prohibitions; and Loan Participation Investments);
- (5) Demonstrated internal expertise to understand and mitigate the risks associated with the activity proposed;

- (6) Evidence of requested approval by NCUA under NCUA regulations 12 C.F.R. §741.8, if federally insured, or bond covenants from American Share Insurance if necessary;
  - (7) Any other information relevant to the transaction and the program; and
  - (8) Information requested by the Commissioner or the Department.
- (d) A federally insured credit union purchasing assets or assuming liabilities of another entity must also comply with applicable requirements contained within the NCUA regulations 12 C.F.R. Part 741.
- (e) A credit union shall submit the letter of application as defined in subsection (c) of this section no later than 60 days prior to the planned closing date of any program-related transaction(s). Late applications may be considered when there are extenuating circumstances deemed acceptable to the Commissioner. Final approval/disapproval shall be given in writing by the Commissioner and shall include the basis for the decision.

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter I (relating to Reserves and Dividends), of the Texas Administrative Code, Title 7, Part 6, consisting §§91.901 and 91.902.

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, Subchapter I, was published in the September 30, 2022, issue of the *Texas Register* (47 TexReg 6471) as required. The Department received no comments 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 I. Reserves and Dividends**

### **§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 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. 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) 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) 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) 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.

(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.

## **§91.902. Dividends.**

- (a) Dividend eligibility shall be prescribed by written board policy.
- (b) When a credit union is subject to a cease and desist order or is otherwise notified that it is deemed to be in a troubled condition or engaged in an unsafe practice, the credit union must obtain prior written approval of the commissioner before it declares or pays any dividend or interest refund. A request for approval to pay a dividend or interest refund under this section must be in writing and must include the following supporting information:
  - (1) the proposed dividend and/or interest refund rate and the estimated total dollar amount of payment;
  - (2) an analysis of the credit union's ability to make the payment from current earnings without incurring an operating loss for the period; and
  - (3) an explanation of the progress in resolving the areas of concern detailed in the cease and desist order or the examiner's findings schedule of the most recent report of examination.

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

### **FUTURE COMMISSION MEETINGS**

**G. Next Commission Meeting** – The next regular meeting of the Commission has been tentatively scheduled for March 10, 2023.

### **ADJOURNMENT**

# **FUTURE CREDIT UNION COMMISSION MEETING DATES**

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**Friday, March 10, 2023**

**Friday, July 14, 2023**

**Friday, November 3, 2023**

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**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.**

***CREDIT UNION DEPARTMENT***

***INDUSTRY STATUS***

***AND***

***DEPARTMENTAL OPERATION***



# Credit Union Department

## Year to Date of Quarterly Assessment of HUB Related Activities

Report Month: 4Q22YTD

FY: 2022

PROCUREMENT CATEGORY	GOAL	QYTD PERFORMANCE	YTD PERFORMANCE
Heavy Construction	11.20%	*	*
Building Construction	21.10%	*	*
Special Trade Construction	32.90%	100.00%	0.66%
Professional Services	23.70%	0.00%	0.00%
Other Services	26.00%	52.20%	61.38%
Commodities	21.10%	0.00%	44.27%

\* This goal is generally not applicable to the Department

PROCUREMENT CATEGORY	(BLM, BLF) AFRICAN AMERICAN	(ASM, ASF) ASIAN AMERICAN	(HIM, HIF) HISPANC AMERICAN	(VVV, VVY) NATIVE AMERICAN	(WOF) NON MINORITY WOMAN	NON HUB	HUB TOTAL
Total Expenditure During This YTD Quarter							
Heavy Construction	\$-00	\$-00	\$-00	\$-00	\$-00	\$-00	\$-00
Building Construction	\$-00	\$-00	\$-00	\$-00	\$-00	\$-00	\$-00
Special Trade Construction	\$-00	\$-00	\$-00	\$-00	\$14.08	\$2,133.10	\$14.08
Professional Services	\$-00	\$-00	\$-00	\$-00	\$-00	\$-00	\$-00
Other Services	\$12,304.50	\$28.78	\$345.00	\$-00	\$51,363.84	\$40,297.47	\$64,042.12
Commodities	\$7.90	\$3,106.65	\$-00	\$-00	\$10,231.79	\$16,800.11	\$13,346.34
<b>Total Sums</b>	<b>\$12,312.40</b>	<b>\$3,135.43</b>	<b>\$345.00</b>	<b>\$0.00</b>	<b>\$61,609.71</b>	<b>\$59,230.68</b>	<b>\$77,402.54</b>

PROCUREMENT CATEGORY	(BLM, BLF) AFRICAN AMERICAN	(ASM, ASF) ASIAN AMERICAN	(HIM, HIF) HISPANC AMERICAN	(VVV, VVY) NATIVE AMERICAN	(WOF) NON MINORITY WOMAN	NON HUB	HUB TOTAL
Number of HUB/Non-HUB Vendors (Ongoing and New) Utilized This YTD Quarter							
Heavy Construction	0	0	0	0	0	0	0
Building Construction	0	0	0	0	0	0	0
Special Trade Construction	0	0	0	0	1	3	1
Professional Services	0	0	0	0	0	0	0
Other Services	5	2	1	0	7	38	15
Commodities	1	2	0	0	14	37	17
<b>Total Sums</b>	<b>6</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>22</b>	<b>78</b>	<b>33</b>

# TEXAS CREDIT UNION DEPARTMENT

## Average Salary and Tenure by Race and Sex

Race	Sex	Annual Salary	Tenure	
Summary for (1 detail record)				
Summary for 'Race' = (1 detail record)				
Avg				
Avg				
ASIAN				
Summary for M (2 detail records)				
\$ 91,769 14.15 Avg				
Summary for 'Race' = ASIAN (2 detail records)				
\$ 91,769 14.15 Avg				
BLACK				
Summary for F (5 detail records)				
\$ 98,303 8.76 Avg				
Summary for M (1 detail record)				
\$ 92,859 8.53 Avg				
Summary for 'Race' = BLACK (6 detail records)				
\$ 97,396 8.72 Avg				
HISPA				
Summary for F (6 detail records)				
\$ 65,290 10.46 Avg				
Summary for M (1 detail record)				
\$ 113,982 5.68 Avg				
Summary for 'Race' = HISPA (7 detail records)				
\$ 72,246 9.78 Avg				
WHITE				
Summary for F (1 detail record)				
\$ 123,200 1.04 Avg				
Summary for M (13 detail records)				
\$ 88,631 10.49 Avg				
Summary for 'Race' = WHITE (14 detail records)				
\$ 91,100 9.81 Avg				
TOTALS				
30 \$ 87,898 9.88 Avg				

# TEXAS CREDIT UNION DEPARTMENT

## Average Salary and Tenure by Race and Sex (ADMIN)

Race	Sex	Annual Salary	Tenure	
<b>HISPA</b>				
Summary for F (3 detail records)		\$ 59,393	16.29	Avg
Summary for M (1 detail record)		\$ 113,982	5.68	Avg
Summary for 'Race' = HISPA (4 detail records)		\$ 73,040	13.64	Avg

<b>WHITE</b>				
Summary for F (1 detail record)		\$ 123,200	1.04	Avg
Summary for M (5 detail records)		\$ 136,756	13.03	Avg
Summary for 'Race' = WHITE (6 detail records)		\$ 134,497	11.03	Avg

### TOTALS

10	\$	109,914	12.08	Avg
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# TEXAS CREDIT UNION DEPARTMENT

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

Race	Sex	Annual Salary	Tenure	
<b>ASIAN</b>				
	Summary for M (2 detail records)	\$ 91,769	14.15	Avg
	Summary for 'Race' = ASIAN (2 detail records)	\$ 91,769	14.15	Avg
<b>BLACK</b>				
	Summary for F (5 detail records)	\$ 98,303	8.76	Avg
	Summary for M (1 detail record)	\$ 92,859	8.53	Avg
	Summary for 'Race' = BLACK (6 detail records)	\$ 97,396	8.72	Avg
<b>HISPA</b>				
	Summary for F (3 detail records)	\$ 71,187	4.64	Avg
	Summary for 'Race' = HISPA (3 detail records)	\$ 71,187	4.64	Avg
<b>WHITE</b>				
	Summary for M (8 detail records)	\$ 58,553	8.90	Avg
	Summary for 'Race' = WHITE (8 detail records)	\$ 58,553	8.90	Avg
<b>TOTALS</b>				
	19	\$ 76,310	8.72	Avg