



# CREDIT UNION COMMISSION RULES COMMITTEE MEETING

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

**Thursday, November 2, 2023  
9:00 a.m.**

## **AGENDA**

This meeting of the Texas Credit Union Commission's Rules Committee 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 2, 2023 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 17, 2023. 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 Committee may discuss and/or take action regarding any item on this agenda.**

<b><u>TAB</u></b>	<b><u>PAGE</u></b>
A. Call to Order (9:00 a.m.) – Committee Chair David Shurtz	4
a. Ascertain Quorum	
b. Appoint Recording Secretary	
c. Invitation for Public Input Regarding Rulemaking for Future Consideration	
B. Receive and Approve Minutes of the Rules Committee Meeting of November 4, 2021	7
C. Rulemaking Matters	
(a) Approval for Publication and Comment the Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 Concerning Fees and Charges	17

Adjournment

**Note:** This is a meeting of the Rules Committee of the Credit Union Commission. Because a quorum of the Credit Union Commission may attend this meeting of the Rules Committee, it is being posted, simultaneously, as a meeting of the entire Commission. The committee may meet in closed session on any agenda item if authorized by the Texas 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 may 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, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752--(512) 837-9236, as far in advance of the meeting as possible.

# **FUTURE COMMITTEE MEETING DATES**

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**The committee meets on an “as needed” or “subject to the call of the chair” schedule. If a meeting is necessary, it would normally be held the day before a regularly scheduled commission meeting.**

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B

## **RULES COMMITTEE MEETING MINUTES**

A draft copy of the minutes of the Committee's meeting held on November 4, 2021, is located under ***TAB B***.

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

**RECOMMENDED MOTION:** I move that the minutes of the Committee's November 4, 2021, meeting be approved as presented.

**CREDIT UNION COMMISSION RULES COMMITTEE  
MEETING MINUTES  
Credit Union Department Building  
914 East Anderson Lane, Austin, Texas**

**NOVEMBER 4, 2021**

**A. CALL TO ORDER** – Chairman David Shurtz called the meeting to order at 1:03 p.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Other members present included Liz Bayless, and Beckie Stockstill Cobb. Assistant Attorney General Melissa Juarez was in attendance via videoconference to serve as legal counsel. Staff members in attendance were John J. Kolhoff, Commissioner and General Counsel Nancy Elmilady. Chairman Shurtz appointed Isabel Velasquez as recording secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (**October 11, 2021, TRD#2021006126**).

**❖ RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES** –

Chair Shurtz inquired if there were any requests or motions to excuse an absence. Mrs. Cobb moved to excuse committee member Steve Gilman from the Rules meeting on November 4, 2021. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

**❖ INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION**

– Chairman Shurtz invited public input on matters regarding rulemaking for future consideration by the committee. There was none.

## **B. RECEIVE MINUTES OF PREVIOUS MEETING (August 26, 2021)**

Mrs. Bayless moved to approve the minutes of August 26, 2021, as presented. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

## **C. MANDATORY RULE REVIEW**

(a) **Adoption of the Rule Review of 7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms), Subchapter B (Appeals from Commissioner Decisions, Generally), Subchapter C (Appeals of Preliminary Determinations on Applications), Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal), Subchapter E (Appeals of Orders of Conservation) and Subchapter F (Review and Decision by the Commission) and Re-adoption of Rules.** Commissioner Kolhoff briefly explained that according to Section 2001.039, 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. Notice of the review and a request for comments on the rules in this chapter were published in the *Texas Register*. No comments were received regarding the review.

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

**(b) Adoption of Proposed Amendments to 7 Texas Administrative Code, Part 6, Chapter 91, Subchapter A, Section 91.121 Concerning Complaint Notices and Procedures.** Commissioner Kolhoff briefly explained that the proposed amendments are to implement amendments to Finance Code, Section 15.408 that resulted from the passage of SB 707 (2021 Texas Legislature). Texas Finance Code, Section 15.408 provides that the Commission shall maintain a system to promptly and efficiently act on complaints filed with the Credit Union Department (Department). He further noted that the proposed rule changes incorporate the redesign of Finance Code, Section 15.408 from provisions previously found in Section 15.409 and further amendments, providing for additional data element tracking and annual reporting related to complaints filed with the Department against state-chartered credit unions. Notice of the review and a request for comments on the rule in this chapter were published in the *Texas Register*. No comments were received regarding the review.

After a short discussion, Mrs. Bayless made a motion to recommend that the Commission adopt the proposed rule **7 Texas Administrative Code, Section 91.121** as previously published in the *Texas Register*. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

**(c) Adoption of Proposed Amendments to 7 Texas Administrative Code, Part 6, Chapter 91, Subchapter C, Section 91.301 Concerning Field of Membership.** Commissioner Kolhoff explained that the amended rule is proposed to: (1) ensure consistency with the field of membership language provided by Texas Finance Code, Section 122.051; (2) recognize the growing consumer expectation of operational efficiencies obtained through digital delivery of financial services as well as safety and soundness implications; and (3) ensure competitiveness with the National Credit Union Administration (NCUA) field of membership rules. Commissioner Kolhoff further explained that the purpose of the proposed amendments to Section 91.301 is to remove the local



service area definition, which exceeds the legislative requirements found in Texas Finance Code, Section 122.051, and to allow the Commissioner to consider an institution's ability to provide financial services through digital channels to meet the needs of its membership. The proposed amendments will provide credit unions the full extent of the field of membership provisions found in the Texas Finance Code and will help ensure parity with both federal and foreign state credit unions doing business in Texas. Furthermore, the proposed changes within Section 91.301(a) remove the definition of local service area and the related physical office requirement to allow the Commissioner to consider the ability of an institution to provide digital delivery channels as a viable option in its ability to serve its membership. Finally, the proposed deletion of Section 91.301(e)(2) removes the related physical office requirements for an approved underserved community field of membership, to ensure the Commissioner can consider an institution's use of digital delivery of financial services. The proposed rule amendments and a request for comments on the proposed amendments was published in the *Texas Register*. Eight (8) comments were received supporting the amendments.

Committee Chairman Shurtz opened the floor to the public for discussion.

❖ **Melodie Durst, Executive Director, Credit Union Coalition of Texas.**

Mrs. Durst briefly reported that the Coalition had submitted written comments supporting the proposal. Mrs. Durst reiterated by saying the Commissioner has expressed these changes will go a long way in modernizing this rule and giving state-chartered credit unions the tools necessary in today's day and time to serve their members through a digital format and emphasized how important is to do so. Lastly, she encouraged the Committee to recommend that the Commission adopt the rule as presented.

❖ **Committee Chairman David Shurtz** briefly went on record that there seemed to be a “common theme” through most of the comments received and this is the opportunity of going digitally. This better serves the membership while still balancing safety and soundness, which is key, and giving credit unions the opportunity to ensure they remain competitive in today’s digital world, which is something that is needed.

After a short discussion, Mrs. Cobb made a motion to recommend that the Commission adopt the proposed rule **7 Texas Administrative Code, Section 91.301** concerning field of membership as published in the *Texas Register*. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

**(d) Adoption of Proposed Amendments to 7 Texas Administrative Code, Part 8, Chapter 153 (Home Equity Lending).** Commissioner Kolhoff reported that the interpretations in **7 Texas Administrative Code**, Chapter 153 are administered by the Joint Financial Regulatory Agencies (“Agencies”) consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies received one informal pre-publication comment on the draft of the rule. . In general, the purposes of the proposed rule changes to **7 Texas Administrative Code**, Chapter 153 are to: (1) specify requirements for electronic disclosures and (2) describe Section 50 applicability to out-of-state financial institutions. No comments were received regarding the proposed rule.

After a short discussion, Mrs. Bayless made a motion to recommend that the Commission adopt the amendments to **7 Texas Administrative Code, Part 8, Chapter 153** concerning home equity lending, as published, without changes. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

**ADJOURNMENT** -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 1:15 p.m.

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David F. Shurtz  
Chairman

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Isabel Velasquez  
Recording Secretary

**Distribution:**

Legislative Reference Library

C

## **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 anytime 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, proposed amendments are prepared by staff and presented to the Rules Committee for review.
5. 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.
6. The Committee's recommendation is presented to the Commission for consideration.
7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission approves the proposal for publication, it is transmitted to the ***Texas Register*** for publication as a "proposed" rule amendment.
9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
10. The commission may reconsider the rule anytime 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.
11. 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.
12. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

## **RULEMAKING MATTERS**

The Committee will discuss and possibly vote on potential recommendations to the Credit Union Commission concerning the following item:

- a. Proposed Amendments to **7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113** (Fees and Charges).

**RECOMMENDED ACTION:** The Department requests that the Committee take action as indicated on the documents contained on ***TAB C***.

## **FEES AND CHARGES**

### **C. (a) Proposed Amendments to Rule 7 TAC, Part 6, Chapter 97, Subchapter B Section 97.113 (Fees and Charges).**

#### **BACKGROUND:**

Operations of the Credit Union Department are funded by assessment of an operating fee. This fee is implemented and calculated under rule 97.113. Fees are assessed in declining percentages as assets of a credit union increase. For instance, a \$100 million dollar credit union pays \$20,410 calculated as follows:

- \$200 on the first \$200,000 of assets
- .001625 times \$800,000, the assets between \$200,000 and \$1 million or \$1,300 (\$1,500 total).
- .000340 times \$9 million, the assets between \$1 million and \$10 million or \$3,060 (\$4,560 total).
- .000140 times \$15 million, the assets between \$10 million and \$25 million or \$2,100 (\$6,660 total)
- .000170 times \$25 million, the assets between \$25 million and \$50 million or \$4,250 (\$10,910 total)
- .00019 times \$50 million, the assets between \$50 million and \$100 million or \$9,500 (\$20,410 total)

The most recent adjustment to the fee schedule was made July 12, 2009. That amendment consolidated 5 brackets and increased the maximum bracket from \$1 billion and over to \$2 billion and over. Percentages were slightly decreased or remained the same in that amendment.

This amendment consolidates 3 brackets, sets the minimum bracket at \$3 million in assets and creates a new lower percentage bracket for credit unions greater than \$6.8 billion in assets. It increases the base fee from \$200 to \$1,450 and slightly lowers the percentage assessment for credit unions under \$100 million in assets. The percentage assessment for credit unions between \$100 million and \$1 billion in assets have a slight increase but remain below comparable percentage assessments by the NCUA and DOB. The percentage assessment for assets between \$2 and \$6.8 billion remain the same.



## **PURPOSE OF AMENDMENT**

There is an increased need for funds to support budget flexibility for long range planning, respond to increased reliance on technology (by both the departments and the entities it regulates), respond to greater complexity surrounding risks at credit unions, address the need to prepare for retirements of key staff, increase operating reserves and fund deferred facility maintenance costs. Additionally, a large state regulated credit union, converted to a Federal Charter, which caused a significant revenue decrease.

In response to these issues, the operating fee schedule was reviewed to address an equitable methodology to increase potential fees, streamline the operating fee process, minimize the impact on regulated institutions and maintain competitive parity with other financial institution regulators. To assess the reasonableness of current or proposed fees, we analyzed the Credit Union Department's (CUD) current and proposed fee structure compared to the NCUA (NCUA) and the Texas Department of Banking (DOB). This revealed the following:

- Both the NCUA and DOB fee schedules result in significantly more revenue for regulation of a similar portfolio (number and asset size) of institutions. The NCUA operating fees schedule generates over \$8.6 million, compared to the CUD schedule that generates \$5.6 million or 35% less.
- NCUA's structure favors smaller institutions.
- DOB's structure favors larger institutions.
- CUD's structure favors larger institutions.
- A chart showing percentage of regulated assets relative to current and proposed fee assessments in the categories and comparison to other agencies is below:

Asset Size	% Assets Regulated	% Current CUD Assessment	% Proposed CUD Assessment	Compare % under NCUA scheme	Compare % under DOB scheme
<\$100M	5.0%	12.9%	10.4%	5.3%	19.3%
>\$100M<\$250M	6.5%	10.6%	9.6%	7.0%	12.0%
>\$250m<\$1,000M	30.4%	30.9%	32.4%	33.0%	29.8%
>\$1,000M	58.1%	45.5%	47.6%	54.7%	38.9%

The amendments address the inequities while maintaining a lower fee structure and eliminating unnecessary categories (three categories of fee percentages are eliminated). The new calculations provide nominal regulator fee relief to Credit Unions under \$200 million in assets and protect the larger

institutions with a maximum dollar increase of \$19,640 and add a top tier, to address when a credit union exceeds assets of \$6.8 billion the percentage factor will reduce from .000062 to .000040.

Additionally, we are proposing an amendment to give the Commissioner the authority to reduce the operating fee in addition to simply waiving it. This gives the Department more flexibility in situations where an adjustment to the fee may be appropriate, while waiving the entire fee is unnecessary.

**RECOMMENDED ACTION:** The Committee recommends that the Commission approve for publication and comment the proposed amendments to Rule 7 TAC Section 97.113.

**RECOMMENDED MOTION:** I move that the Committee recommend that the Commission approve the proposed amendments to Rule 7 TAC Section 97.113 concerning Fees and Charges.

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 97, Section 97.113 concerning fees and charges, waiver of fees and semi-annual assessments.

Specifically, the rule changes will:

- fund necessary additional security and operating costs,
- allow the commissioner to reduce, not simply waive, operating fees for individual credit unions,
- align the annual operating fee matrix and methodology with other financial institutions' operating fees methodology, and
- realign the asset size brackets to reflect current asset growth of regulated credit unions.

Texas Finance Code, Section 15.402 (c), authorizes the Commission to establish reasonable and necessary fees for the administration of the Credit Union Department.

Proposed amendments to paragraph (b) include changes to the fee schedule as follows:

1. Changes the base operating fee for the first \$200,000 in assets to the first \$3 million in assets.
2. Changes the base assessment amount from \$200 to \$1,450.
3. Deletes the category of \$200 thousand to \$1 million.
4. Changes the category of \$1 million to less than \$10 million to \$3 million to less than \$10 million.
5. Decreases the rate from a base of \$1,500 to \$1,450 and decreases the percentage assessed from .00034 to .00025 of assets on assets between \$3 million and \$10 million.
6. Deletes two specific categories from \$10 million to \$25 million and \$25 million to \$50 million.
7. Changes the category of \$50 million to \$100 million to \$10 million to \$100 million.
8. Decreases the base amount of the \$10 million to \$100 million category from \$4,560 to \$3,200.
9. Fixes the percentage assessment on assets between \$10 and \$100 million from a range of .00014 to .00019 to a new rate of .000165.
10. Decreases the base assessment for assets between \$100 million and \$500 million from \$20,410 to \$18,050.
11. Increases the percentage assessed on assets between \$100 million and \$500 million from .00008 to .00010.
12. Increases the base assessment for assets between \$500 million and \$1 billion from \$52,410 to \$58,050.
13. Increases the percentage assessed on assets between \$500 million and \$1 billion from .000072 to .000082.
14. Increases the base assessment for assets between \$1 billion and \$2 billion from \$88,410 to \$99,050.
15. Increases the percentage assessed on assets between \$1 billion and \$2 billion from .000069 to .000078.
16. Changes the category of \$2 billion and over to \$2 billion but less than \$6.8 billion.
17. Increases the base amount on the \$2 billion and over category from \$157,410 to \$177,050 (an increase of \$19,640).
18. Adds a category of \$6.8 billion and over of assets.
19. Sets a base amount for over \$6.8 billion in assets of \$474,650.

18. Adds a category of \$6.8 billion and over of assets.
19. Sets a base amount for over \$6.8 billion in assets of \$474,650.
20. Reduces the percentage assessed on assets over \$6.8 billion from .000062 to .000040.

Proposed amendments to (c), adds the ability of the Commissioner to reduce the operating fee of an individual credit union, in addition to being able to waive the fee.

## **STATE AND LOCAL GOVERNMENTS**

Michael S. Riepen, Commissioner, has determined that for the first five-year period that the rule changes are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule changes.

## **STATEMENT OF PUBLIC COST AND BENEFITS**

Mr. Riepen has also determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the proposed amendments because it will provide for investment by the Department in technology, training, data security, addressing financial risks and addressing operational risks.

## **SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES**

Mr. Riepen has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. This will increase regulatory costs to credit unions with assets larger than \$238 million and two credit unions under \$1 million in assets. Allowing the commissioner to reduce fees in addition to waiving them provides flexibility in mitigating any impact to an institution. The maximum \$19,640 proposed fee increase for the larger credit unions is of an amount that is considered immaterial to the profitable operations of these institutions.

## **GOVERNMENT GROWTH IMPACT STATEMENT**

- Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not:
- Create or eliminate a government program;
- Require the creation of new employee positions or the elimination of existing employee positions;
- Require an increase or decrease in future legislative appropriations to the agency;
- Create new regulations;
- Expand, limit, or repeal an existing regulation;
- Increase or decrease the number of individuals subject to the rule's applicability; or
- Positively or adversely affect this state's economy.

## **NEED FOR DEPARTMENT OPERATING FLEXIBILITY**

Adjustments to the operating fee will provide for nominal, but much needed, funds for operations flexibility. This is needed for strategic expenditures related to:

- Investment in cybersecurity related to the systems utilized by the Credit Union Department.
- Investment in technology upgrades.
- Creation of a position for a full-time training examiner and a Subject Matter Expert related to more complex, and/or problematic CU operations.
- Investment in an internal audit and internal controls.
- Implementation of a succession plan related to future retirements in key positions.
- Additional flexibility to fund unexpected operating costs.

## **PARITY WITH REGARD TO OTHER DEPOSITORY INSTITUTIONS**

Changes to the operating fee schedule will provide for greater parity with other depository institutions who currently charge higher incremental rates at most asset levels. The Texas Finance Code, Section 15.402(b)(3) provides "...the commission shall consider the need to.... (3) preserve and protect the competitive parity of credit unions with regard to other depository institutions consistent with the safety and soundness.... (c) requires that "The commission by rule shall establish reasonable and necessary fees for the administration of this chapter and Subtitle D, Title 3." (The Texas Credit Union Act).

## **COMMENTS**

Written comments on the proposed amendments may be submitted to Michael S. Riepen, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@tud.texas.gov. To allow the Commission sufficient time to fully address all the comments it receives, all comments must be received on or before 5:00 p.m. on the 31<sup>st</sup> day after the date the proposal is published in the *Texas Register*.

## **AUTHORITY**

The rule changes are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code Title 2, Chapter 15 and Title 3, Subtitle D.

The statutory provision authorizing the proposed amendments is Texas Finance Code, Section 15.402 (c), regarding establishing reasonable and necessary fees for the administration of the Credit Union Department.



## Supplemental for changes to 7 T.A.C. §97.113

### Total budget comparisons to other chartering agencies:

ASSET SIZE- JUNE 2023	Count June 2023	SCU Asset total in Category	Total Portfolio Assessments			
			Current Assessment	NCUA equivalent Assessment	DOB equivalent Assessment	Proposed
Less than \$200,000	0	\$ -	\$ -	\$ -	\$ -	\$ -
\$200,000 to 1 m	2	\$ 1,219,142	\$ 1,731	\$ -	\$ 7,688.38	\$ 2,900.00
\$1,000,000 but less than \$3M	5	\$ 10,251,108	\$ 9,285	\$ 861.65	\$ 25,911.60	\$ 7,250.00
\$3M but less than \$10M	25	\$ 141,449,221	\$ 77,093	\$ 19,108.15	\$ 213,333.13	\$ 52,862.31
\$10M but less than \$25M	25	\$ 435,693,687	\$ 139,997	\$ 67,390.73	\$ 412,019.39	\$ 110,639.46
\$25M but less than \$40M	15	\$ 495,010,518	\$ 120,302	\$ 78,764.93	\$ 337,111.69	\$ 104,926.74
\$40M but less than \$50m	6	\$ 273,245,369	\$ 60,912	\$ 43,852.29	\$ 153,504.14	\$ 54,385.49
\$50M but less than \$70M	9	\$ 538,808,951	\$ 115,064	\$ 86,936.35	\$ 261,853.69	\$ 102,853.48
\$70M but less than \$100 M	11	\$ 982,209,600	\$ 202,130	\$ 159,365.78	\$ 397,681.16	\$ 179,114.58
\$100M but less than \$250M	24	\$ 3,735,655,233	\$ 596,692	\$ 609,045.51	\$ 1,122,184.19	\$ 566,765.52
\$250M to \$500M	14	\$ 5,206,167,970	\$ 590,233	\$ 851,982.84	\$ 1,012,375.35	\$ 633,316.80
\$500M but less than \$1,000M	16	\$ 12,285,053,408	\$ 1,147,084	\$ 2,013,228.97	\$ 1,774,639.24	\$ 1,280,174.38
\$1,000M but less than \$2,000M	9	\$ 11,723,167,908	\$ 983,589	\$ 1,922,177.81	\$ 1,438,759.42	\$ 1,103,857.10
\$2,000 M to \$2.26	2	\$ 4,171,558,168	\$ 325,457	\$ 684,182.80	\$ 455,933.04	\$ 364,736.61
2.26 billion to 6.8 billion	5	\$ 17,472,044,805	\$ 1,250,317	\$ 2,148,543.73	\$ 1,752,276.70	\$ 1,348,516.78
\$5 Billion to \$6.8 Billion	0	\$ -	\$ -	\$ -	\$ -	\$ -
NCUA Max Tier over 6.8 billion**	0	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>168</b>	<b>\$ 57,471,535,088</b>	<b>\$ 5,619,885.03</b>	<b>\$ 8,685,441.55</b>	<b>\$ 9,365,271.13</b>	<b>\$ 5,912,299.23</b>

### Sample Operating Fee Comparison

Assets	CUD (current)	NCUA	DOB	CUD (Proposed)
\$ 200,000	\$ 200.00	\$ -0	\$ 3,463.77	\$ 1,450.00
\$ 1,000,000	\$ 1,500.00	\$ -0	\$ 4,206.84	\$ 1,450.00
\$ 10,000,000	\$ 4,560.00	\$ 1,476.81	\$ 12,566.36	\$ 3,150.00
\$ 25,000,000	\$ 6,660.00	\$ 3,938.16	\$ 20,471.35	\$ 5,625.00
\$ 50,000,000	\$ 10,910.00	\$ 8,041.41	\$ 26,676.75	\$ 9,750.00
\$ 100,000,000	\$ 20,410.00	\$ 16,244.91	\$ 31,579.69	\$ 18,000.00
\$ 500,000,000	\$ 52,410.00	\$ 81,880.91	\$ 84,804.50	\$ 58,000.00
\$ 1,000,000,000	\$ 88,410.00	\$ 163,925.91	\$ 133,551.52	\$ 99,000.00
\$ 2,000,000,000	\$ 157,410.00	\$ 328,015.91	\$ 220,507.52	\$ 177,000.00
\$ 9,000,000,000	\$ 591,410.00	\$ 623,450.05	\$ 797,571.52	\$ 562,600.00

## Subchapter B. Fees

### §97.113. Fees and Charges.

(a) Remittance of fees.

(1) Each credit union authorized to do business under the Act shall remit to the department an annual operating fee. The fee shall be paid in semi-annual installments, billed effective September 1 and March 1 of each year. The final installment may be adjusted as provided by subsection (d) of this section. Installments received after September 30 or March 30 of each year will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(2) Credit unions that exit the Texas credit union system on or before August 31 or February 28 of a given year, will not be subject to the semi-annual assessment for the period beginning September 1 or March 1, respectively. Only those credit unions leaving the state credit union system prior to the close of business on those dates avoid paying the semi-annual assessment for the period beginning September 1 or March 1, as applicable.

(b) Calculation of operating fees. The schedule provided in this section shall serve as the basis for calculating operating fees. The base date shall be June 30 of the year in which operating fees are calculated. The asset base may be reduced by the amount of reverse-repurchase balances extant on the June 30 base date. The commissioner is authorized to increase the fee schedule once each year as needed to match revenue with appropriations. An increase greater than 5% shall require prior approval of the commission. The commissioner shall notify the commission of any such adjustment at the first meeting of the commission following the determination of the fee schedule.

**For Credit Unions with Total Assets Of:**

**The Operating Fee is:**

Less than **\$3M** [**\$200,000**]

**\$1,450** [**\$200**]

**[\$200,000 but less than \$1M]**

**[\$200 plus .001625 of excess over \$200,000]**

**\$3M** [**\$1M**] but less than \$10M

**\$1,450** [**\$1,500**] plus **.00025** [**.00034**] of excess over **\$3M** [**\$1M**]

**[\$10M but less than \$25M]**

**[\$4,560 plus .00014 of excess over \$10M]**

**[\$25M but less than \$50M]**

**[\$6,660 plus .00017 of excess over \$25M]**

**\$10M** [**\$50M**] but less than \$100M

**\$3,200** [**\$10,910**] plus **.000165** [**.00019**] of excess over **\$10M** [**\$50M**]



\$100M but less than \$500M	<b>\$18,050</b> <b>[\$20,410]</b> plus <b>.00010</b> <b> [.000080]</b> of excess over \$100M
\$500M but less than \$1,000M	<b>\$58,050</b> <b>[\$52,410]</b> plus <b>.000082</b> <b> [.000072]</b> of excess over \$500M
\$1,000M but less than \$2,000M	<b>\$99,050</b> <b>[\$88,410]</b> plus <b>.000078</b> <b> [.000069]</b> of excess over \$1,000M
\$2,000M <b>but less than \$6,800M [and over]</b>	<b>\$177,050</b> <b>[\$157,410]</b> plus .000062 of excess over \$2,000M
<b><u>\$6,800M and over</u></b>	<b>\$474,650 plus .00004 of excess</b> <b>over \$6,800M</b>

- (c) Waiver **or reduction** of operating fees. The commissioner is authorized to waive **or reduce** the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver **or reduction** of operating fees and report such waiver **or reduction** to the commission at its next meeting.
- (d) Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of actual revenues to date and projected revenues for the remainder of the fiscal year, lower the amount of the final installment due from credit unions.
- (e) Supplemental examination fees.
  - (1) If the commissioner or deputy commissioner schedules a special examination in addition to the regular examination, the credit union is subject to a supplemental charge to cover the cost of time and expenses incurred in the examination.
  - (2) The credit union credit union shall pay a supplemental fee of \$50 for each hour of time expended on the examination. The commissioner may waive the supplemental fee or reduce the fee, individually or collectively, as he deems appropriate. Such waiver or reduction shall be in writing and signed by the commissioner. The department shall fully explain the time and charges for each special examination to the president or designated official in charge of operations of a credit union.
- (f) Foreign credit union branches. Credit unions operating branch offices in Texas as authorized by §91.210 of this title (relating to Foreign Credit Unions) shall pay an annual operating fee of \$500 per branch office.
- (g) Credit union conversion fee. A credit union organized under the laws of the United States or of another State that converts to a credit union organized under the laws of this State shall remit to the department an annual operating fee within 30 days after the issuance of a charter by the commissioner. The schedule provided in subsection (b) of this section shall serve as the basis for calculating the operating fee. All provisions set forth in subsection (b) of this section shall apply to converting credit unions with the following exceptions:
  - (1) Should the effective date of the conversion fall on or after October 31, the base date shall be the calendar quarter end immediately preceding the issuance date of a charter by the commissioner.



(2) The amount of the operating fee calculated under this section will be prorated based upon the number of full months remaining until September 1. For example, should the effective date of the conversion be January 31, the converting credit union will remit seven-twelfths of the amount of the operating fee calculated using December 31 base date.

(3) Any fee received more than 30 days after the issuance of a charter will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

- (h) Mergers/Consolidations. In the event a credit union in existence as of June 30 merges or consolidates with another credit union and the merger/consolidation is completed on or before August 31, the surviving credit union's asset base, for purposes of calculating the operating fee prescribed in subsection (b) of this section, will be increased by the amount of the merging credit union's total assets as of the June 30 base date.
- (i) Special assessment. The commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.
- (j) Foreign credit union fee for field of membership expansion. A foreign credit union applying to expand its field of membership in Texas shall pay a fee of \$200. This fee shall be paid at the time of filing to cover the cost of processing the application. In addition, the applicant shall pay any cost incurred by the department in connection with a hearing conducted at the request of the applicant.
- (k) Foreign credit union examination fees.
  - (1) If the commissioner schedules an examination of a foreign credit union, the credit union is subject to supplemental charges to cover the cost of time and expenses incurred in the examination.
  - (2) The foreign credit union shall pay a fee of \$50 for each hour of time expended by each examiner on the examination. The commissioner may waive the examination fee or reduce the fee as he deems appropriate.
  - (3) The foreign credit union shall also reimburse the department for actual travel expenses incurred in connection with the examination, including mileage, public transportation, food, and lodging in addition to the fee set forth in paragraph (2) of this subsection. The commissioner may waive this charge at his discretion.
- (l) Contract Services. In addition, the commissioner may charge, or otherwise cause to be paid by, a credit union, a foreign credit union or related entities the actual cost incurred by the department for an examination or a review of all or part of the operations or activities of a credit union, a foreign credit union or related entity that is performed under a personal services contract entered into between the department and third parties.