



CREDIT UNION COMMISSION RULES COMMITTEE MEETING

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

**Thursday, March 21, 2024
1:00 p.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 on the day of the meeting, March 21, 2024 at 1:00 p.m.

An electronic copy of the agenda is now available at www.cud.texas.gov under Credit Union Commission, Commission Meetings, along with a copy of the meeting materials. A recording of the meeting will be available after March 29, 2024. 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.

<u>TAB</u>		<u>PAGE</u>
A.	Call to Order (1:00 p.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 2, 2023	7
C.	Rulemaking Matters	
	(a) Adoption of Amendments to 7 TAC, Part 6, Chapter 97 Subchapter B, Section 97.113 Concerning Fees and Charges	16

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.

A

CALL TO ORDER

CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- *David F. Shurtz, Chair*
- *Liz Bayless, Vice Chair*
- *Beckie Stockstill Cobb*
- *Jim Minge, Ex-Officio*

Legal Counsel

- *Karen L. Miller*

Staff

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

FUTURE COMMITTEE MEETING DATES

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.

B

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on November 2, 2023, 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 2, 2023, meeting be approved as presented.

**CREDIT UNION COMMISSION RULES COMMITTEE
MEETING MINUTES**

NOVEMBER 2, 2023

A. CALL TO ORDER – Chairman David Shurtz called the meeting to order at 9:02 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Other members present included Liz Bayless, and Beckie Stockstill Cobb. Staff member in attendance was Michael S. Riepen, Commissioner. Chairman Shurtz appointed Isabel Velasquez as recording secretary. Chairman Shurtz introduced Karen L. Miller, General Counsel for the Department, who will serve as legal counsel for the Committee at this meeting. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (October 16, 2023, TRD#2023005942).

❖ RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES –

Chair Shurtz inquired if there were any requests or motions to excuse an absence. There was none.

❖ 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 (November 4, 2021)

Mrs. Cobb moved to approve the minutes of November 4, 2021, as presented. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

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. Commissioner Riepen explained that the most recent adjustment to the fee schedule was made on July 12, 2009. The amendment consolidated 5 brackets and added additional brackets for credit unions \$2 billion and over. Percentages slightly decreased or remained the same in lower brackets, with small, gradual increases in higher brackets. Mr. Riepen further reported that there is an increased need for funds to support budget flexibility for long range planning; respond to increased reliance on technology by both the Department 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; replace the operating fee revenue loss from a large state chartered credit union that converted to a federal charter; and fund deferred facility maintenance costs. The new calculations provide some regulatory fee relief to credit unions under \$200 million in assets and protects the larger credit unions from any material increase as the maximum dollar fee increase is \$19,640. Furthermore, we are proposing an amendment to give the Commissioner the authority to reduce the operating fee in addition to simply waiving it. This will give the Department more flexibility in situations where an adjustment to the fee may be appropriate, while waiving the entire fee is unnecessary.

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 has had some feedback from some of their members. While the rule has not been changed since 2009, it is important to note that fees that credit unions are paying have increased and based on the formula credit unions are paying more. Mrs. Durst expressed that she did not receive any comments that are not supportive of the reasons for the increase, whether its cybersecurity or any of the other initiatives that have already been adopted back in August. Lastly, she encouraged the Committee to take a little closer look at the methodology and how much of an increase each credit union would see.

After a lengthy discussion among the committee members, Mrs. Bayless made a motion to recommend that the Commission approve for publication and comment the proposed amendments to rule 7 TAC, Section 97.113. 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 10:25 a.m.

David F. Shurtz
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

DRAFT

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

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

FEES AND CHARGES

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

BACKGROUND:

The Credit Union Commission (Commission) approved amendments to §97.113, Fees and Charges, at the meeting on November 3, 2023, and they were published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6709).

These amendments modify the operating fee rate tiers, reflecting overall credit union asset growth since the last adjustment to the fee in 2009. The amendments also provide that the Commissioner can adjust an operating fee (in addition to waiving it), subject to reporting requirements.

Operating fee tier adjustments consolidate lower asset size categories, slightly reduces fees for credit unions \$1 million to \$215 million in assets, increases the base fee amount from \$200 to \$1,450, slightly increases the incremental rate to credit unions in the \$250 million to \$2 billion in assets, and sets a lower rate for assets exceeding \$6.8 billion. The largest increase is \$19,640 annually for credit unions with more than \$2 billion in assets. The fee structure continues to provide for less annual operating fees compared to the federal charter alternative (NCUA) if assets exceed \$136 million.

These adjustments are necessary to fund future budgeted expenditures in technology, training, staffing, and increased reserves, and support the mission of the Department.

Comments at the November meeting was both against and for the amendment. One written comment against the amendment was received.

The written comment published amendment(s) and proposed preamble are attached.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission approve and adopt the proposed amendments.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to adopt the proposed amendments to Rule 7 TAC Section 97.113 as previously published in the *Texas Register*.

The Credit Union Department (Department) adopts the amendments to 7 TAC, Chapter 97, §97.113, concerning Fees and Charges, without changes to the text published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6709). The amendments will not be republished.

The amended rule allows the Department to:

1. Streamline the operating fee by consolidating tiers,
2. Provide a nominal reduction in assessments for credit unions under \$250 million in assets and nominal increase to credit unions whose assets exceed \$250 million.
3. Provide additional operating revenue to fund department expenditures.
4. Establish a decreased percentage assessment for institutions whose assets exceed 6.8 billion dollars, and
5. Give the Commissioner the power to adjust, as opposed to waive, an operating fee.

The new rule is adopted because:

1. The current operating fee schedule is based on regulated portfolio asset distributions over fourteen years ago, and there is a need to update the schedule.
2. It provides for additional operating funding to accomplish future agency objectives, including:
 - a. Continue a robust examination process.
 - b. Pay for an outside internal audit.
 - c. Invest in technology infrastructure.
 - d. Hire additional staffing to train and replace key personnel subject to retirement.
3. It creates a new tier for the largest institutions, with a reduced percentage assessment for a larger asset size credit union to remain competitive on regulatory fees.

The Department received one comment against the proposed rule, from a trade association. This trade association represents larger state and federal credit unions in Texas. At its meeting on November 3, 2023, the Commission received public comments both in support of, and in opposition to, the rule.

Overall, the commentator felt a rule revision was unnecessary, asserting that the current assessment framework was sufficient, the proposed rule created inequities by placing too high a burden on larger institutions, and the department should provide more detailed information to support any changes.

The Department disagrees with the commentator's assertions that the current rule provides for sufficient revenue. The commentator proposes if the current framework is not adequate, a special assessment or reserves should be used. The Department responds that a history of operating expenses below budgeted expenditures should not limit future department needs and aspirations. The purpose of the amendment is to provide for a forward-thinking revenue methodology and revenue that allows room for necessary investments and strategic initiatives. The modest increase to credit unions over \$250 million in assets permits the department to fund investments in examiner training, staff retention and staff additions, increased reserving, succession planning and acquiring needed technology infrastructure. Since these expenditures are recurring and ongoing, it would not be prudent to fund these through special assessments. Likewise, the reserve fund which was determined by the Sunset Advisory Commission to be

inadequate and not in alignment with the best practices of other SDSI agencies, should not be depleted but increased. (See Issue 2 of the Summary of Sunset Staff Report 2020-2021, 87th Legislature; <https://www.sunset.texas.gov/reviews-and-reports/agencies/credit-union-department>).

The proposed fee schedule does not unduly place the financial burden on one quarter of the credit unions. Currently, the ten largest state-chartered credit unions represent 45.7% of assets regulated but only 34.7% of the annual assessment. In essence, the current fee structure gives a 10% reduction in operating fees to the larger credit unions compared to smaller credit unions, relative to asset size. Under the proposed rule, the ten largest credit unions would make up 45.7% of assets regulated and 36.1% of the total operating fee assessment. The proposal addresses, but does not eliminate, the existing uneven financial burden placed on smaller, not larger, institutions.

The commentator states “Larger credit unions are examined....less often than smaller credit unions...and proportionally utilize fewer Department resources”. The Department’s review of examination frequencies and use of department resources does not support this statement. Larger credit unions are examined more often than smaller credit unions, as all credit unions over one billion in assets are scheduled to be examined every 12 months, as required by their deposit insurer (NCUA). For credit unions over \$500 million and less than one billion in assets, approximately 25% are on a 12-month cycle. Smaller credit unions are targeted for a less frequent 15-month cycle. Not only are larger credit unions examined more frequently, but they also require more exam days, and due to greater complexity and increased risks, they are assigned experienced, and thus more expensive, examination staff. Larger credit unions also require more resources in other operational areas, such as member complaints. Since 2022, over 55 % of public complaints processed involve credit unions with more than \$1 billion in assets, and over 85% of complaints involve institutions greater than \$250 million in assets.

It should also be noted that state chartered larger institutions have a lower assessment than they would pay if federally chartered. For example, a \$1 billion federal chartered credit union would pay \$174,220 compared to the current department assessment of \$88,353 (or the proposed \$99,050). Even with the proposed increase, the savings afforded a state charter, for this size credit union, is over \$75,000 annually and even more for credit unions of a larger asset size. (For a \$ 2 billion federal credit union the NCUA operating fee assessment would be \$328,016 versus the proposed state assessment of \$177,050).

The commentator requested the methodology behind restructuring the tiers from the current 10 tiers to 8 tiers. Credit unions have generally increased in assets since the 2009 amendments, making some asset categories not relevant. The number of institutions in the categories being consolidated are those with assets less than \$100 million, which have decreased from 165 credit unions in 2009 to 98 today. Conversely, those over \$500 million in assets numbered 11 in 2009 and number 32 today. One category was added to be used in the future for the largest institutions.

The Department declines to follow the commentator’s suggestion that the Department detail specific planned expenditures prior to implementation of this rule. First, general budget needs

have been outlined herein. All future expenditures will be detailed in Department budgets which undergo a robust and transparent review and approval process by the Commission with the opportunity for public input.

Likewise, the Department declines to set criteria for a reduction or waiver of the operating fee. Our current regulatory framework provides that the Commissioner can waive an operating fee, subject to reporting requirements to the Commission. This has been the law for many years without any concerns. The proposed amendment modifies the authority to include reducing the fee in addition to granting a total waiver. The rule continues to include the same public reporting requirements to the Commission that have provided effective oversight of its use in the past.

The Department's mission statement requires it to safeguard the public interest, protect the financial interests of credit union members, and promote public confidence in credit unions. It is the Department's position that revisions to this rule support this mission.

The new rule is adopted under Texas Finance Code, 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, particularly subsection (c) which provides that the commission by rule shall establish reasonable and necessary fees for the administration of this chapter and Subtitle D, Title 3.

<rule>

§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:

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

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

\$3M [\$1M] but less than \$10M
[\$.00034]

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

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

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

\$100M but less than \$500M

\$500M but less than \$1,000M

\$1,000M but less than \$2,000M

\$2,000M **but less than \$6,800M [and over]**

\$6,800M and over

The Operating Fee is:

\$1,450 [\$200]

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

\$1,450 [\$1,500] plus **.00025**

of excess over **\$3M [\$1M]**

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

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

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

\$18,050 [\$20,410] plus **.00010**
[\$.000080] of excess over \$100M

\$58,050 [\$52,410] plus **.000082**
[\$.000072] of excess over \$500M

\$99,050 [\$88,410] plus **.000078**
[\$.000069] of excess over \$1,000M

\$177,050 [\$157,410] plus **.000062**
of excess over \$2,000M

\$474,650 plus .00004 of excess over \$6,800M

- (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 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.

- (1) 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.

Isabel Velasquez

From: Melodie Durst <mdurst@uhcu.org>
Sent: Monday, December 18, 2023 12:20 PM
To: CUD Email
Subject: Comments on Proposed Amendments to 7 TAC §97.113 Concerning Fees and Charges
Importance: High

**CAUTION: This email originated from outside of the Credit Union Department's email system.
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December 18, 2023

Michael S. Riepen, Commissioner
Texas Credit Union Department
914 E. Anderson Lane
Austin, TX 78742

RE: Comments on Proposed Amendments to 7 TAC §97.113 Concerning Fees and Charges

Dear Commissioner Riepen:

On behalf of the Credit Union Coalition of Texas (Coalition), thank you for the opportunity to comment on the proposed amendments to §97.113 concerning Fees and Charges. The mission of the Coalition is to ensure that Texas credit unions have the legislative and regulatory flexibility to remain competitive and relevant in the marketplace. Our organization represents state and federal credit unions across the state with combined assets of more than \$36 billion and over 2 million credit union members.

For more than two decades, the Coalition has supported the various funding requests for the Texas Credit Union Department (Department) whether working to secure funding through the State's appropriations process or supporting the budget proposals as a self-directed, semi-independent agency (SDSI). As an SDSI agency, the Credit Union Commission (Commission) has the responsibility of adopting a budget that funds the operations of the Department, along with a strategic plan that sets the agency's overall goals and plan to achieve those goals. To reiterate, the Coalition supports the full funding of the Department, however we do have concerns related to the proposed amendments to §97.113.

In August 2023, the Commission adopted the FY 2024 Budget of approximately \$5.5 million which represents a 9.8% increase in agency expense from the prior year operating budget. Further, the FY 2024 Budget reflects an approximate 10.45% revenue increase that includes a \$90,609 Operating Fee Adjustment to help build reserves (i.e., minimum 90 days of operating expense). It's worth noting that the "Summary of Proposed FY 2024 Budget" included in the Commission packet compares revenue and expense to prior year budget, not actual. The actual comparison reflects an increase of 18.61% and 19.92%, respectively. That said, it appears a sizable portion

of previous year budgeted expenses were not incurred therefore resulting in less demand for revenue than was predicted.

It is our opinion; the current rule provides the necessary mechanism for raising sufficient revenue for funding the operations of the Department in an equitable manner for all state credit unions. The reality is, as credit union assets grow, so will the amount that can be raised. Further, the Department has the ability to amend the process or methodology for assessing fees at any time. Should circumstances warrant, the Department can simply reduce or eliminate the longstanding discount of the second assessment thus allowing the Department to retain additional revenue. If our understanding of the current rule and process is inaccurate, we respectfully request the Department properly quantify the expenses that it presumes cannot be covered by the revenue generated by the existing rule.

It's worth noting that the Department also has the authority to issue a special assessment or, if circumstances warrant, utilize the Reserve Fund. While these may not be the Commission's first choice, they are options nonetheless when extraordinary circumstances arise.

Additionally, all regulated entities should contribute to the operations of the Department. The fees paid not only help cover the cost of examinations but overhead costs that should be allocated to each credit union. As drafted, the proposed fee schedule unduly places the majority of the financial burden on approximately one quarter of the credit unions. In addition, the larger credit unions are examined, on average, less often than the smaller asset credit unions and, arguably, proportionately utilize fewer Department resources. Further, the preamble for the proposal fails to provide a clear reason for the change in tiers and how this would avoid potentially significant revenue shortfalls should any of the larger credit unions depart the state system. We respectfully request the Department explain how the various tiers were determined, why certain tiers were eliminated or added, and why or under what circumstances a credit union would not be required to pay a fee.

As part of the 2021 Sunset Review, the Texas Sunset Commission directed the Department to implement a more streamlined and reliable fee assessment policy and process. Although, to our knowledge, the industry has not voiced concern with the current methodology, it would seem the timing is appropriate for the Department to consider potential changes. Absent changes to the policy, the Department should delineate why they are not responding to the Sunset Commission's directive.

In closing, the existing rule has served the industry and the Department well for more than a decade. The proposed amendments to §97.113 have raised numerous questions and concerns on the part of our members. While we do not dispute there are Department priorities and strategic initiatives that are worthy of funding, it is our opinion additional research and analysis is warranted before moving forward with any changes to the fee schedule. The Department should clearly and concisely articulate in writing why new revenue is needed and how that revenue will be expended. **We strongly request the Commission withdraw the proposed amendments as published, and refer the matter back to the Rules Committee for further analysis and discussion.**

Thank you again for the opportunity to share our thoughts and concerns. I am available to answer any questions you may have.

Sincerely,

Melodie Durst
Executive Director
Credit Union Coalition of Texas
P.O. Box 171089
Austin, TX 78717
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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	<u>\$18,050</u> <u>[\$20,410]</u> plus <u>.00010</u> <u>[.000080]</u> of excess over \$100M
\$500M but less than \$1,000M	<u>\$58,050</u> <u>[\$52,410]</u> plus <u>.000082</u> <u>[.000072]</u> of excess over \$500M
\$1,000M but less than \$2,000M	<u>\$99,050</u> <u>[\$88,410]</u> plus <u>.000078</u> <u>[.000069]</u> of excess over \$1,000M
\$2,000M <u>but less than \$6,800M</u> <u>[and over]</u>	<u>\$177,050</u> <u>[\$157,410]</u> plus .000062 of excess over \$2,000M
<u>\$6,800M and over</u>	<u>\$474,650</u> <u>plus .00004 of excess</u> <u>over \$6,800M</u>

- (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 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.