



CREDIT UNION COMMISSION RULES COMMITTEE MEETING

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

**March 20, 2025
10:00 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 virtually, 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 20, 2025, at 10:00 a.m.

An electronic copy of the agenda is now available at www.cud.texas.gov under Credit Union Commission, Commission Meetings, along with a copy of the meeting materials. A recording of the meeting will be available after March 29, 2025. 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 Rules Committee is allowed. Unless authorized by a majority vote of the meeting quorum, the comments of any person wishing to address the Committee 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.) – Chair Liz Bayless	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 July 18, 2024	8
C. Rulemaking Matters – Consider Recommendation for Publication in <i>Texas Register</i>	
(a) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter A (General Provisions), Subchapter B (Fees), Subchapter C (Department Operations), Subchapter D (Gifts and Bequests), Subchapter E (Advisory Committees), and Subchapter F (Rulemaking) and Readoption of Rules	16
(b) Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter A, Section 97.107 (Related Entities)	28
(c) Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges)	29
(d) Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations)	35

Adjournment

Note: This is a meeting of the Rules Committee of the Credit Union Commission; however, there may be other members of the Credit Union Commission attending this meeting. Since there might be a quorum of the Commission attending this meeting of the Commissioner Evaluation Committee, it is being posted as a meeting of the entire Commission.

Executive Session: The Credit Union Commission Rules Committee 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 Committee does not finish deliberation of an item on the first day for which it was posted, the Committee 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

CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- *Liz Bayless, Chair*
- *David Shurtz*
- *Becky Ames*
- *Jim Minge, Ex-Officio*

Legal Counsel

- *Karen L. Miller*

Staff

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

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 July 18, 2024, 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 July 18, 2024, meeting be approved as presented.

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

JULY 18, 2024

A. CALL TO ORDER – Chairman David Shurtz called the meeting to order at 10:05 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 Ex-Officio Jim Minge. Chairman David Shurtz and Beckie Stockstill Cobb were in attendance via videoconference. Staff members in attendance were Michael S. Riepen, Commissioner, Karen Miller, General Counsel who will serve as legal counsel for the Committee at this meeting, and Joel Arevalo, Director of Information and Technology. 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 (**June 20, 2024, TRD#2024003638**).

❖ **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 (March 21, 2024)

Mrs. Cobb moved to approve the minutes of March 21, 2024, as presented. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

C. RULEMAKING MATTERS

(a) **Discussion, Consideration and Possible Vote to Recommend the Commission Take Action on the Completed Rule Review of 7 TAC, Part 8, Chapter 151 (relating to Home Equity Lending Procedures), 7 TAC, Part 8, Chapter 152 (relating to Repair, Renovation, and New Construction on Homestead Property), and 7 TAC, Part 8, Chapter 153 (relating to Home Equity Lending), and Re-adoption of Rules.** Commissioner Riepen explained that the Finance Commission of Texas and the Texas Credit Union Commission (commissions) have completed the rule review of the following chapters in 7 TAC, Part 8, in their entirety: Chapter 151 concerning Home Equity Lending Procedures, Chapter 152 concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153 concerning Home Equity Lending. The commissions received no official comments in response to the notice of review published in the March 29, 2024, issue of the *Texas Register*.

As a result of the rule review, the commissions find that the reasons for initially adopting the Rules in 7 TAC, Chapters 151, 152, and 153 continue to exist, and readopting these chapters in accordance with the requirements of the Texas Government Code, Section 2001.039.

After a short discussion among the committee members, Mrs. Bayless made a motion to recommend that the commission find that the reasons for adopting the completed rule review of **7 TAC, Part 8, Chapters 151, 152, and 153** continue to exist and that the Commission readopt the rules. Mrs. Cobb seconded the motion, and the motion was unanimously adopted.

(b) Discussion, Consideration and Possible Vote to Recommend that the Commission Approve the Proposed Amendments to 7 TAC, Part 8, Chapter 151, Section 151.1 Concerning Interpretation Procedures.

Commissioner Riepen briefly explained that in general, the purpose of the proposed rule changes is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, Section 2001.039. Currently, Section 151.1(d) describes the requirements for formally requesting a home equity interpretation. The proposed amendments would specify that any petition for the Finance Commission to issue a home equity interpretation must be sent to the Department of Savings and Mortgage Lending, replacing current language that refers to the Office of Consumer Credit Commissioner. The Department of Savings and Mortgage Lending has the primary responsibility to license and regulate companies providing mortgage loans in Texas. The agencies anticipate that the Department of Savings and Mortgage Lending will take a leading role in coordinating future home equity interpretations.

After a brief discussion among the committee members, Mrs. Bayless made a motion to recommend that the Commission approve for publication and comment the proposed amendments to **7 TAC, Part 8, Chapter 151.1** concerning Interpretation Procedures. 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 10:17 a.m.

David F. Shurtz
Chairman

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 and the Finance Commission for consideration.
3. The Commission and the Finance 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 and the Finance 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 and the Finance 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 and the Finance Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission and the Finance Commission.
6. The Committee's recommendation is presented to the Commission and the Finance Commission for consideration.
7. The Commission and the Finance Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission and the Finance 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 and the Finance 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.

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 and the Finance Commission concerning the following items:

- a. Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the completed Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter A (General Provisions), Subchapter B (Fees), Subchapter C (Department Operations), Subchapter D (Gifts and Bequests), Subchapter E (Advisory Committees), and Subchapter F (Rulemaking) and Readoption of Rules.
- b. Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter A, Section 97.107 (Related Entities).
- c. Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges).
- d. Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations).

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

MANDATORY RULE REVIEW

C. (a) Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the completed Rule Review of 7 TAC, Part 6, Chapter 97, Subchapter A (General Provisions), Subchapter B (Fees), Subchapter C (Department Operations), Subchapter D (Gifts and Bequests), Subchapter E (Advisory Committees), and Subchapter F (Rulemaking) and Readoption 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 March 22, 2024, 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 97, Subchapter A, (General Provisions), Subchapter B (Fees), Subchapter C (Department Operations), Subchapter D (Gifts and Bequests), Subchapter E (Advisory Committees), and Subchapter F (Rulemaking) and believes certain revisions are appropriate and necessary. Amendments to the noted chapters are being separately presented for proposal.

Notice of the review and a request for comments on the rules in this chapter was published in the February 28, 2025, 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 requests that the Committee recommend to the Commission to publish the rule review as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC, Part 6, Chapter 97, Subchapter A, (General Provisions), Subchapter B (Fees), Subchapter C (Department Operations), Subchapter D (Gifts and Bequests), Subchapter E (Advisory Committees), and Subchapter F (Rulemaking) continue to exist and that Commission readopt the rules in this chapter.

CHAPTER 97

Subchapter A. General Provisions

§97.101. Meetings.

The time and place of regular and special meetings of the Commission and its committees shall be determined by the applicable chair and posted in accordance with the Open Meetings Act (Government Code, Chapter 551). The minutes of each meeting shall be in writing, shall be posted on the Department's website, and shall be available to any person to examine during the Department's regular office hours.

§97.102. Delegation of Duties.

The Commissioner is authorized to complete all filings necessary to facilitate the rule making powers of the Commission. The Commissioner may draft and sign final adoption orders and other such instruments where delegation is not restricted by statute or rule. Notwithstanding other provisions of this rule, this authority is conveyed only to promote administrative efficiency and to expedite properly approved decisions of the Commission.

§97.103. Recusal or Disqualification of Commission Members.

- (a) A commission member may not vote on or otherwise participate in the deliberation or decision of a matter pending before the commission:
 - (1) in which the commission member has a personal or private interest; or
 - (2) which directly affects the credit union of which the commission member is an officer, director, or member.
- (b) The term "personal or private interest" shall be given the meaning as prescribed in Texas Government Code, Section 572.058, and includes a direct personal or financial interest in a credit union or other matter which is the subject of commission action.
- (c) A commission member who is disqualified under subsection (a) of this section shall publicly disclose the fact to the commission in a meeting called and held in compliance with the Open Meetings Act, Texas Government Code, Chapter 551. The disclosure shall be entered in the minutes of the meeting.
- (d) A commission member who is recused or disqualified will be counted in determining a quorum.

§97.105. Frequency of Examination.

The department shall perform an examination of each credit union authorized to do business under the Act at least once during each 12-month period. Annual examination intervals may be extended by the Department to a maximum 18 months, subject to safety and soundness considerations. Intervals between examinations shall not exceed 18 months, unless a longer interval is authorized in writing by the commission. In lieu of conducting an examination required by this rule, the commissioner in the exercise of discretion may accept examinations or reports from other credit union supervisory agencies or insuring organizations.

§97.107. Related Entities.

(a) Definition. For the purposes of this section, a related entity is defined as:

(1) a credit union service organization in which a credit union has a material interest by contracting with, lending to or investing in the organization;

(2) a subsidiary or affiliate of a credit union service organization that is wholly owned or controlled by a credit union;

(3) an organization engaged primarily in the business of managing a credit union; and

(4) third-party contractors providing electronic data processing, electronic fund transfers, or other member services to or on behalf of a credit union.

(b) General Supervision. A credit union should perform a thorough analytical assessment to identify, measure, monitor, and establish controls to manage the risks associated with related entities and avoid excessive risk-taking that may threaten the safety and soundness of a credit union. The department may review the risks associated with any related entity and its activities together with other credit union risks using its supervision-by-risk framework. The department shall assess the effectiveness of a credit union's oversight program of related entities, including its strategic planning, third-party selection process, and ongoing monitoring.

(c) Examination. A credit union's use of related entities to achieve its strategic goals does not diminish the responsibility of the department to ensure that the activity is conducted in a safe and sound manner and in compliance with applicable law. Although in most situations, these activities should be conducted in the same manner that would be expected if the credit union were conducting the activities directly, the department shall consider the following factors in determining whether to examine exam related entities:

(1) the high risk or unusual nature of the activities conducted by the related entity for the credit union;

(2) the significance of the activities conducted by the related entity for the credit union to the credit union's operations and income; and

(3) the extent to which the credit union has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the related entity. The department may examine a related entity, as the commissioner deems necessary to ensure that a credit union is not assuming excessive risk.

(d) Examination Fee. The related entity shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). A credit union may elect to pay the fee on behalf of the related entity. The supplemental examination fee for a related entity may be waived or reduced if the commissioner determines it is appropriate.

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 \$200,000	\$200
\$200,000 but less than \$1M	\$200 plus .001625 of excess over \$200,000
\$1M but less than \$10M	\$1,500 plus .00034 of excess over \$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
\$50M but less than \$100M	\$10,910 plus .00019 of excess over \$50M
\$100M but less than \$500M	\$20,410 plus .000080 of excess over \$100M
\$500M but less than \$1,000M	\$52,410 plus .000072 of excess over \$500M
\$1,000M but less than \$2,000M	\$88,410 plus .000069 of excess over \$1,000M
\$2,000M and over	\$157,410 plus .000062 of excess over \$2,000M

(c) Waiver of operating fees. The commissioner is authorized to waive the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver of operating fees and report such waiver 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.

§97.114. Charges for Public Records.

(a) Reproduction Charges. Copies of documents not excepted from disclosure by the Texas Public Information Act (Government Code, Chapter 552) may be obtained upon written request to the department at rates established by the Office of the Attorney General in 1 TAC Sections §§70.1-70.12 (relating to Cost of Copies of Public Information) or other applicable law.

(b) Request for Information. The following guidelines apply to requests for records under the Public Information Act (Government Code, Chapter 552).

(1) Request must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the department.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided only the option of receiving copies by duplication.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication unless required by a court order or Attorney General decision.

(c) Waiver of Fees or Charges. The commissioner may waive or reduce an established charge when, in his or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public. The fee may also be waived if the cost of processing the collection of a charge will exceed the amount of the charge.

§97.115. Reimbursement of Legal Expenses.

(a) The commissioner may seek reimbursement of expenses from an individual credit union for legal fees incurred solely and necessarily because the credit union acted in an unreasonable or egregious manner or acted outside the course and scope of what is permitted by statute or regulation. To ensure that the rights and interest of all parties are protected, this section shall not apply to any adjudicative proceedings in which the legal rights, duties, or privileges of the credit union are being determined by the Department after an opportunity for hearing. This section also does not apply to court proceedings where the individual credit union's legal rights, duties, or privileges are being determined as against the Department.

(b) The credit union has thirty days from the date it receives the assessment to pay in full or to appeal in writing to the Commission.

(c) If a credit union files a written notice of appeal, the Commission shall hear the appeal at its next regularly scheduled meeting. In making its decision, the Commission shall consider whether the credit union acted reasonably under the circumstances or acted within its legal rights.

(d) When possible, the Department will notify a credit union before the Department requests legal assistance which may be charged to a credit union under this section.

§97.116. Recovery of Costs for Extraordinary Services Not Related to an Examination.

(a) The commissioner may seek reimbursement from an individual credit union for non examination-related expenses incurred solely and necessarily because the credit union acted in an unreasonable or egregious manner, or acted outside the course and scope of what is permitted by statute or regulation. Expenses can include personnel costs, transportation costs, meals, lodging, and other incidental expenses. If the commissioner determines that recovery of costs is appropriate, the Department shall provide advance notice to the credit union of its intention to recover the expenses.

(b) In seeking reimbursement, the commissioner shall consider the amount of the costs involved, the nature of the credit union's conduct, the service provided, the financial impact on the credit union, and the impact of the activity on other Department services. The commissioner may reduce the charges and bill the credit union less than the full amount of the costs.

(c) The credit union has thirty days from the date it receives the assessment to pay in full or to appeal in writing to the Commission.

(d) If a credit union files a written notice of appeal, the Commission shall hear the appeal at its next regularly scheduled meeting. In making its decision, the Commission shall consider whether the credit union acted reasonably under the circumstances or acted within its legal rights.

Subchapter C. Department Operations

§97.200. Employee Training Program.

(a) Components of program. The employee training program for the department consists of one or more of the following components:

(1) Agency-sponsored training to include in-house training sessions and on-the-job training;

(2) Formal training program conducted through the National Credit Union Administration as administrator of the National Credit Union Share Insurance Fund.

(3) Seminars and conferences; and

(4) Formal course of study at an accredited institution of higher education.

(b) In order for the cost of training and the time related to that training to be reimbursed by the department, the employee must demonstrate that the course has direct applicability to the employee's job with the department. Attendance at an approved training session described in subsection (a)(1)-(3) will be considered part of the employee's normal work duties and will not require the employee to use accrued leave to attend.

(c) Requests to attend an external training program, seminar or conference pursuant to this section must be approved by the commissioner. Approval of a request is contingent upon availability of funds. If limited funds are available, and more than one employee wishes to participate, a decision regarding who will attend will be based upon the extent of their previous use of funds, the training's merit and its value to the department's operations.

(d) Continuing education courses. Continuing education courses required by licensing or certifying bodies for employees to maintain a professional license or designation will only be reimbursed if such courses relate directly to the employee's job duties with the department and there are funds available.

(e) Tuition reimbursement. The Commissioner must authorize in writing the reimbursement of tuition in accordance with this subsection.

(1) The department may reimburse full-time employees for part or all of tuition and required fees for formal courses of study described in subsection (a)(4) provided the eligibility criteria set forth below are met.

(A) An employee must have completed 24 consecutive months of full-time employment with the department prior to requesting approval to receive tuition reimbursement. However, the 24-month requirement may be waived if the commissioner finds that the employee needs a particular course to fulfill his or her work duties.

(B) An employee must be performing consistently above that normally expected or required and must have achieved an overall performance rating of at least 3.50 on the employee's most recent performance evaluation.

(C) An employee must not have been subject to formal disciplinary action for at least twelve months prior to requesting approval. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

(D) The course work must be related to a current or prospective duty assignment within the department.

(E) An employee, before the course begins, must agree in writing to the repayment requirement stated in this subsection.

(F) At the time of the request for approval to receive tuition reimbursement, comparable training must not be scheduled to be offered in-house or through the National Credit Union Administration during the period of time covered by the tuition reimbursement.

(G) The employee's participation must not adversely affect workload or performance.

(H) The employee must complete the course within the semester for which tuition reimbursement was requested.

(I) The employee must receive a passing grade in the course. A passing grade is a grade which will entitle the employee to receive credit for the course from the educational institution offering the course.

(2) Reimbursable costs. Criteria addressing the extent to which cost of tuition may be reimbursed are as follows:

(A) The maximum amount an employee may be reimbursed for an approved tuition reimbursement request is \$250 per semester, not to exceed \$500 per fiscal year. The maximum amount of reimbursement may be increased up to \$400 per semester for good cause shown upon approval by the commissioner.

(B) Reimbursable costs include tuition, related fees, and required textbooks and workbooks. Employees will not be reimbursed for auditing a course.

(C) Costs described in subparagraph (B) of this paragraph will be paid to the employee at the completion of the course upon the employee submitting proof that the course was completed and a passing grade was received.

(3) Repayment. Should an employee separate from department service within 12 months of completion of the course, the employee must reimburse the department for all reimbursable costs expended by the department for that course in accordance with section 656.103 of the Texas Government Code (relating to Restrictions on Certain Training Costs). The commission may adopt an order waiving this requirement upon finding that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee.

(4) Prohibition on use of state resources. Employees may not use department equipment, such as computers, calculators or typewriters to complete course work.

§97.205. Use of Historically Underutilized Businesses.

Pursuant to Chapter 2161 of the Government Code, the Department hereby incorporates by reference the rules of the Comptroller of Public Accounts, 34 TAC §§20.11-20.28 (relating to Historically Underutilized Business Program), or any successor rules, regarding historically underutilized businesses. The Department shall comply, to the extent applicable, with the requirements of these rules when purchasing goods and services that are paid for with State appropriated money.

§97.206. Posting Of Certain Contracts: Enhanced Contracts And Performance Monitoring.

(a) Pursuant to section 2261.253 of the Texas Government Code, the Department will implement the following procedures for contracts for the purchase of goods or services from private vendors:

(1) The Department will list information pertaining to its contract with private vendors on its website. The information will include:

(A) The name of the vendor with whom the contract is made;

(B) A description of the competitive bidding process for the contract, or, if the contract did not involve competitive bidding, a citation and explanation of the legal authority supporting exemption from the competitive bidding process;

(C) A link to a copy of the request for proposal for the contract, if applicable until the contract expires or is completed; and

(D) A link to a copy of the contract with the vendor until the contract expires or is completed.

(2) Enhanced contract or performance monitoring procedure until the contract expires or is completed.

(A) For each contract whose value is greater than \$25,000, the Commissioner and the Department Procurement Director will evaluate whether enhanced contract or performance monitoring is appropriate. Criteria that may be considered include:

(i) Total cost of the contract.

(ii) Risk of loss to the Department under the contract.

(iii) Department resources available for enhanced contract or performance monitoring.

(B) After evaluation of the contract, the Commissioner will immediately report to the Commission Members:

(i) The basis for determination as to whether enhanced contract or performance monitoring is appropriate;

(ii) Include any serious issues or risks identified with the contract, if applicable; and

(iii) If enhanced contract or performance monitoring is appropriate, the Department's plan for carrying out the enhanced contract or performance monitoring.

(C) Commission members may agree to convene a special commission meeting for the purposes of discussion or deciding upon matters related to enhanced contract or performance monitoring of Department contracts. This meeting would be conducted in conformity with the Texas Open Meetings Act.

(b) This rule applies only to contracts for which the request for bids or proposals is made public on or after September 1, 2015; or, if the contract is exempt from competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memorandums of understanding, interagency contracts, interlocal agreements or contracts that do not involve a cost to the Department.

§97.207. Contracts for Professional or Personal Service.

(a) In connection with the authority granted to the commissioner to negotiate, contract or enter into an agreement for professional or personal services under §15.414, Texas Finance Code, the Department hereby incorporates by reference the procurement rules of the Comptroller of Public Accounts, 34 TAC Chapter 20 (relating to Texas Procurement and Support Services), or any successor rules, regarding soliciting and awarding contracts. The Department shall comply, to the extent applicable, with the requirements of these rules when contracting for professional or personal services that are paid for with State appropriated money or paid by credit unions pursuant to 7 TAC §97.113(l) of this title (relating to Fees and Charges).

(b) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds: "Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards."

(c) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding dispute resolution: "The parties shall attempt to resolve any dispute arising under this contract by using the Department's dispute resolution process." The Department hereby incorporates by reference as its dispute resolution process the rules found in 1 TAC Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes), or any successor rules.

Subchapter D. Gifts and Bequests

§97.300. Gifts of Money or Property.

(a) The department may accept money or property by gift, bequest, devise, or otherwise ("Donation"), only from an organization described in Section 501(c)(3), Internal Revenue Code of 1986, for the purposes of funding or performing any authorized activity ("Donor").

(b) All Donations must be accepted in an open meeting by a majority of the commission members present and reported in the minutes of the meeting setting forth the name of the Donor and the purpose of the Donation. Before accepting a Donation, the commission may require the Donor to provide information that the commission deems reasonable and necessary to ensure itself that the Donation is not being conveyed to directly or indirectly influence an official act of the department or the commission.

(c) The department may not solicit money or property from any person or organization to settle an administrative action or to keep the department from taking formal enforcement action.

Subchapter E. Advisory Committees

§97.401. General Requirements.

- (a) **Definition.** For purposes of this rule, the term “advisory committee” means a committee, council, board, task force, or other entity with multiple members established to provide advice and counsel to the commission.
- (b) **Creation.** The commission may establish advisory committees to advise the commission on issues within the jurisdiction of the department.
- (c) **Function.** Unless otherwise provided by law, an advisory committee’s responsibility is limited to those matters about which advice or counsel is sought. An advisory committee will have no authority to make rules or establish department policy.
- (d) **Expiration of advisory committee.** Unless expressly provided in this subchapter or other law, an advisory committee will expire on the fourth anniversary of the date of its creation. The date of creation shall be the effective date of the rule establishing the advisory committee.
- (e) **Membership and Quorum.** The chairman may appoint a maximum of 24 individuals to serve on an advisory committee. A majority of those individuals shall constitute a quorum. Unless otherwise provided by specific statute, the appointments shall be balanced to ensure representation of credit unions regulated by the department and consumers of services provided by those credit unions. Each advisory committee shall include at least one department employee as an ex officio member. This employee shall not be considered a committee member for purposes of establishing the maximum number of members or for purposes of determining a quorum.
- (f) **Term of members.** Unless expressly provided in this subchapter or other law, each member of an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman.
- (g) **Presiding officer.** The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.
- (h) **Meetings.** Meetings shall be subject to the requirements of Chapter 551 of the Government Code. Each committee shall meet at least annually, but may meet as often as necessary. The department ex officio member of each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.
- (i) **Reports.** On or before October 1 of each year, each advisory committee shall submit a report to the commission. Upon receipt of the report, the commission shall evaluate the advisory committee's work, usefulness, and costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities. Each report shall include the following:
 - (1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 31);
 - (2) a summary of recommendations from the advisory committee; and
 - (3) other information determined by the advisory committee or the chairman to be appropriate and useful.
- (j) **Expenses.** Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(k) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications, including experience requirements, geographic representation, and training requirements. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

Subchapter F. Rulemaking

§97.500. Petitions to Initiate Rulemaking Proceedings.

(a) Petitions to initiate rulemaking proceeding pursuant to Government Code, §2001.021, must be submitted to the Department in writing. A petition must include:

- (1) a brief explanation of the proposed rule;
- (2) the full text of the proposed rule, and, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and
- (3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it.

(b) When the Department receives a rulemaking petition, the Department shall review it for compliance with the requirements of subsection (a) of this section. If the petition is determined to comply, the Department shall notify the applicant that the petition has been accepted for filing and will be processed in accordance with Government Code, §2001.021(c). If it is determined the petition does not comply with subsection (a), the Department shall notify the applicant in writing of all deficiencies found and give the petitioner an opportunity to cure them by filing an amended petition. If no amended petition curing the deficiencies is filed with the Department by 5:00 p.m. on the 15th calendar day following the date that the Department mailed a notice of deficiencies to the petitioner, the petition shall be deemed denied for the reasons stated in the deficiency notice without the necessity of further action.

(c) If the petition is accepted for filing, within 60 days of the date that a petition is accepted for filing, the Department must either deny the petition for reasons stated in writing or initiate a rulemaking proceeding.

§97.501. Hearing on Proposed Rules.

(a) The Department shall grant an opportunity for a public hearing before adoption of any substantive rule as required by Government Code, §2001.029(b), or other applicable statute.

(b) The hearing may be held by the commissioner or by any other person designated by the commissioner. In the exercise of discretion, the commissioner may impose reasonable time limits on presentation of evidence and argument, determine the order of the presentations, and conduct the hearing in a manner suitable to the particular proceeding. Public hearings on proposed rules are neither contested cases nor full legal adversary proceedings. Ex parte prohibitions do not apply.

RELATED ENTITIES

C. (b) Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 6, Chapter 97, Subchapter A, Section 97.107 Concerning Related Entities.

BACKGROUND: It has been determined that no action is needed on this item.

RECOMMENDED ACTION: No action needed.

RECOMMENDED MOTION: No motion needed.

FEES AND CHARGES

C. (c) Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 Concerning Fees and Charges.

BACKGROUND: The proposed amendments to 97.113 will better organize the fees section, allow adjustments based on the budget for both semiannual assessments instead of only the second assessment and add the ability to recover direct contractual obligations related to expenditures paid to third parties. Lastly, we request a mechanism to charge user based fees, subject to Commission approval.

Operating fees: Much of the current rule relates to operating fees, however these provisions are not grouped together and are scattered. The proposed changes will list all details of operating fees under the same section, (a).

A change was made to the installment adjustment provisions to allow for adjustment of either the first or final operating fee installment. This is in response to a recommendation in the Sunset Commission review.

The hourly rate for supplemental or special examinations is requested to be increased from \$50 to \$100, to more appropriately reflect staff costs.

Foreign credit unions: Fees for foreign credit unions are also not grouped in the current rule amendments group applicable rules together. Recommended changes group these fees so they are all under part (d) of the rule. It increases the administrative fees for branch offices from \$500 to \$1,000 and membership expansion requests from \$200 to \$1,000.

Contract Services: Amendment is requested for the Commissioner to charge a credit union contract expense incurred by the department solely related to regulating that specific credit union and paid to third parties. It would allow the recovery of direct costs incurred, such as administrative appeals to SOAH, as opposed to those expenses being borne by all regulated credit unions through their operating fee assessment.

User Fee: This would allow the Commissioner to propose certain user fees to offset costs involved in administrative functions. We are not recommending any user fees at this time.

The rule change allows an additional tool during the annual budgeting process should we anticipate expenditures in excess of normal operating fee assessments. Fees would be considered as an alternative to assessing a discretionary operating fee increase to be paid by all credit unions.

In fiscal year 2024, only 25% of regulated credit unions required any complaint processing and approximately half of the complaints processed were related to only 8 credit unions, less than 5% of state charters. Less than 25% of regulated credit unions requested bylaw amendments and less than 5% requested merger related approvals. All of these services require significant staff resources, particularly as credit union operations and expansion requests have become more complex.

Any proposed fees would require official Commission approval and review at least every two years.

RECOMMENDED ACTION: The Department requests that the Committee recommend the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment on the Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 concerning Fees and Charges.

§97.113. Fees and Charges.

(a) **Operating Fee [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. **Either [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.

(3) [(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 \$200,000	\$200
\$200,000 but less than \$1M	\$200 plus .001625 of excess over \$200,000
\$1M but less than \$10M	\$1,500 plus .00034 of excess over \$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
\$50M but less than \$100M	\$10,910 plus .00019 of excess over \$50M

\$100M but less than \$500M	\$20,410 plus .000080 of excess over \$100M
\$500M but less than \$1,000M	\$52,410 plus .000072 of excess over \$500M
\$1,000M but less than \$2,000M	\$88,410 plus .000069 of excess over \$1,000M
\$2,000M and over	\$157,410 plus .000062 of excess over \$2,000M

(4) 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.

(5) [(c)] Waiver of operating fees. The commissioner is authorized to waive the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver of operating fees and report such waiver to the commission at its next meeting.

(6) [(d)] Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of **anticipated and** actual revenues **[to date]** and projected revenues **[for the remainder of the fiscal year, lower]** **adjust** the amount of **either [the final]** installment due from credit unions.

(7) Late Fee. Installments received after September 30 or March 30 of each year will be subject to a monthly 10% late fee (calculated on the balance due) unless waived by the commissioner for good cause.

(8) Credit union conversion. 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 (a)(4) of this section shall serve as the basis for calculating the operating fee. All provisions set forth in subsection (a)(4) of this section shall apply to converting credit unions with the following exceptions:

(A) 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.

(B) 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.

(C) 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.

(9) 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.

(b) [(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 **\$100 [\$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.]

(c) [(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.

(d) [(j)] Foreign credit unions.

(1) 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 \$1,000 per branch office.

(2) Field of membership expansion **[fee for]**. A foreign credit union applying to expand its field of membership in Texas shall pay a fee of **\$1,000 [\$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 **any [a]** hearing conducted **[at the request of the applicant]**.

(3)(k) Foreign credit union examination fees.

(A) [(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.

(B) [(2)] The foreign credit union shall pay a fee of **\$100 [\$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.

(C) [(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.

(e) [(l)] Contract Services. **The [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 **reasonable cost paid [incurred]** by the department for **legal fees, adjudication fees or** an examination or a review of all or part of the operations or **applications [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.

(f) User Fees. The Commissioner may implement, subject to approval by the Commission, a fee schedule to offset administrative costs incurred for activities such as processing complaints, applications, and other administrative functions. Any administrative fee schedule shall be reviewed and approved by the Commission at least every two years. Any fee schedule approved by the Commission shall be included with the credit union's operating fee statement, prior to the effective date, and published on the Department's website.

DEFINITIONS AND INTERPRETATIONS

C. (d) Discussion, Consideration and Possible Vote to Recommend that the Commission take action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A Section 91.101 Concerning Definitions and Interpretations.

BACKGROUND: This requested amendment replaces the phrase “political jurisdiction” with “political subdivision”. It also adds a definition for political subdivision. This is necessary to avoid confusion about unifying characteristics and provide consistency with other provisions in the rules referencing “political subdivision” which number seven. This is the only instance in the rules that mentions “political jurisdiction”.

RECOMMENDED ACTION: The Department requests that the Committee recommend the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment on the Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 concerning Definitions and Interpretations.

CHAPTER 91

Subchapter A. General Rules

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long-term) contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues;

(ii) whether the members participate in furtherance of the goals of the association;

(iii) whether the members have voting rights;

(iv) whether there is a membership list;

(v) whether the association sponsors activities;

(vi) what the association's membership eligibility requirements are; and
(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who:

- (i) live in;
- (ii) worship in;
- (iii) attend school in; or
- (iv) work in that community. The geographic community of interest

requirements are met if the area to be served is in a recognized single political **subdivision [jurisdiction], as defined in this rule [e.g., a city or a county, or a portion thereof].**

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(8) A credit union service organization (CUSO)--an organization authorized by §91.801 (relating to Investments in Credit Union Service Organizations). A consolidated CUSO is one where control or ownership by a credit union requires consolidation of the credit union and CUSO financial statements to comply with Generally Accepted Accounting Principles.

(9) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(10) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(11) Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(12) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(13) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(14) Improved residential property--residential real estate containing on-site, offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

(15) Interactive teller machine (ITM) -- a video-based interactive technology which allows members to conduct transactions and credit union services driven by a centrally based teller, in a real time video or audio interaction.

(16) Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(17) Loan and extension of credit--a direct or indirect advance of funds to or on behalf of a member based on an obligation of the member to repay the funds or repayable from the application of the specific property pledged by or on behalf of the member. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(18) Loan-to-value ratio--the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien divided by the current value of the collateral.

(19) Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

- (A) Buyer and seller are typically motivated;
- (B) Both parties are well informed or well advised, and acting in their own best interests;
- (C) A reasonable time is allowed for exposure in the open market;
- (D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U.S. Office of Management and Budget.

(22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned ITM or other electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest--the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) Political Subdivision--a county, municipality, special district, school district, junior college district, housing authority, or other political subdivision of this state or any other state.

(28) [(27)] Principal office--the home office of a credit union.

(29) [(28)] Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(30) [(29)] Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(31) [(30)] Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(32) [(31)] Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(33) [(32)] Resident of this state--a person physically located in, living in or employed in the state of Texas.

(34) [(33)] Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(35) [(34)] Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(36) [(35)] Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(37) [(36)] TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(38) [(37)] Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code Banking and Securities, which contains all of the department's rules.

(39) [(38)] Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely affected economic development within the specified area.

(40) [(39)] Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(41) [(40)] Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.