

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 97, Section 97.113 concerning fees and charges.

Specifically, the proposed amendments will:

- Organize the rule by grouping the types of fees authorized.
- Clarify that the costs for professional, dispute resolution and legal fees can be passed on to any regulated Credit Union directly causing the expense.
- Increase the hourly rates for special examinations from \$50.00 to \$100.00 per hour.
- Increase fees charged to foreign credit unions.
- Provide for the ability of the Commission to implement user-based fees in the future.

The amendments are proposed because of the Department's general rule review.

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

STATE AND LOCAL GOVERNMENTS

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

STATEMENT OF PUBLIC COST AND BENEFITS

Karen Miller has also determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the proposed amendments because it will allow the Department to recover costs directly related to special services provided to regulated credit unions in lieu of those costs being paid by all regulated credit unions.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

Karen Miller has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, changes to the rules will not:

- Create or eliminate a government program;
- Require the creation of new employee positions or the elimination of existing employee positions;
- Require an increase or decrease in future legislative appropriations for the agency;
- Create new regulations;
- Expand, limit, or repeal an existing regulation;
- Increase or decrease the number of individuals subject to the rule's applicability; or

- Positively or adversely affect this state's economy.

COMMENTS

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

AUTHORITY

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

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

§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 paragraph (6) [(d)] of this subsection. [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.]

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(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 paragraph (3) of this subsection shall serve as the basis for calculating the operating fee. All provisions set forth in paragraph (3) of this subsection 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 paragraph (3) of this subsection, 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 [union].

[(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 cost incurred by the department for legal fees, adjudication fees and 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. This includes fees paid to the Texas Attorney General's Office and State Office of Administrative Hearings.

(f) Administrative Fees. The commissioner may implement, subject to approval by the commission, an administrative fee(s) 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 once every two years. Any administrative 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.