



CREDIT UNION COMMISSION

Rules Committee Meeting

*Credit Union Department Building
914 East Anderson Lane
Austin Texas 78752*

**Thursday, July 17, 2025
9:00 a.m.**

*** * * AGENDA * * ***

This meeting of the Texas Credit Union Commission's Rules Committee will be held at the Credit Union Department Building at 914 E. Anderson Ln., Austin, Texas 78752 and is open to the public. Only onsite testimony will be allowed; however, the meeting will be transmitted live through a link on the Department's webpage at www.cud.texas.gov on the day of the meeting, July 17, 2025, at 9:00 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 July 17, 2025. To obtain a recording, please contact Joel Arevalo 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.

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| | (2) Appoint Recording Secretary | |
| | (3) Invitation for Public Input | |
| | (4) Acknowledge Guests | |
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Adjournment

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

Executive Session: The 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 Texas 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.

A. CALL TO ORDER

**TEXAS CREDIT UNION COMMISSION
RULES COMMITTEE MEETING**

Committee Members

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

Legal Counsel

- *Karen L. Miller*

Credit Union Department Staff

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

B.

**B. APPROVE MINUTES OF THE MARCH 20, 2025,
RULES COMMITTEE MEETING**

A draft copy of the minutes from the March 20, 2025 Committee meeting 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 March 20, 2025 meeting be approved as presented.

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

MARCH 20, 2025

A. CALL TO ORDER – Chair Liz Bayless called the meeting to order at 10:02 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code, and declared that a quorum was present. Another member present included David Shurtz. Becky Ames was absent due to a scheduling conflict. Ex-Officio Jim Minge was in attendance via videoconference. Staff members in attendance were Michael S. Riepen, Commissioner, Robert W. Etheridge, Deputy Commissioner, Karen Miller, General Counsel who will serve as legal counsel for the Committee at this meeting, Joel Arevalo, Director of Information and Technology and Brenda Medina, Executive Assistant. Chair Bayless 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 (**March 7, 2025, TRD#2025001360**).

❖ INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION

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

B. RECEIVE MINUTES OF PREVIOUS MEETING (July 18, 2024)

Mr. Shurtz moved to approve the minutes of July 18, 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 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 Re-adoption of Rules.** Commissioner Riepen explained that 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 rules continues to exist. Staff have reviewed 7 TAC, Part 6, Chapter 97, Subchapters A through F and believe certain revisions are appropriate and necessary. Amendments to the noted Subchapter B (Fees) 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.

As a result of the rule review, the Committee finds that the reasons for initially adopting the Rules in **7 TAC, Part 6, Chapter 97, Subchapters A through F** continue to exist, and readopting these subchapters in accordance with the requirements of the Texas Government Code, Section 2001.039.

After a short discussion among the committee members, Mr. Shurtz made a motion to recommend that the Commission find the reasons for adopting the completed rule review of **7 TAC, Part 6, Subchapters 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 the Commission readopt the rules in this

chapter. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

(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. General Counsel Karen Miller informed the Committee that it had been determined that no action is needed on this item.

(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. Commissioner Riepen redirected this item of the agenda to General Counsel Karen Miller. Ms. Miller reported that the proposed amendments to Section 97.113 would 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 are requesting a rule to charge user-based fees, subject to Commission approval. Ms. Miller explained the different sections of the fees outlined in the rule are grouped together in the amendments such as operating fees, foreign credit unions, contract services and user fee. Furthermore, the rule change would allow an additional tool during the annual budgeting process should the Department anticipate expenditures in excess of normal operating fee assessments. Fees could be considered as an alternative to an operating fee increase to be paid by all credit unions. And lastly, any proposed user fees would require official Commission approval, prior notice and review at least every two years.

- David Shurtz, committee member, went through a list of suggested edits to the proposed rule changes. These were discussed and some adopted.

Chair Bayless opened the floor to the public for discussion.

- **Melodie Durst, Executive Director, Credit Union Coalition of Texas,** offered her appreciation for the opportunity to ask a couple of questions and offer some feedback. Mrs. Durst thanked Commissioner Riepen, Karen and Robert for sitting down a few weeks ago and going over some ideas that they had at that time. Mrs. Durst reported that in speaking to their membership of the ideas that were originally proposed there was some strong conversation about those proposals, particularly when it comes to user fees. Mrs. Durst referred to the meeting packet saying that she now realizes that the Department is not recommending any fees at this time. However, it appears to be an item for potential conversation. When it comes to complaints specifically, there were a few conversations about the increase in the number of complaints. The question to Mrs. Durst was raised about whether her suggestion was to consider striking the user fee provision, and if so, what were her suggestions or recommendations? Mrs. Durst responded to postponing it and have a conversation about it. She did not feel there's sufficient information here to really explain what the user fees are for and whether charging for complaints was a resolution. Mrs. Durst reminded us that the Governor is asking state agencies to take a closer look at what they're spending, their fees, burdens on the businesses that they regulate, etc. A few things to think about as you go through this process and look at the proposals again, the commission might consider exploring cost reductions before implementing new fees.
- **Jim Minge, Commission Chairman,** made one comment back to Mrs. Durst's comments that hit a nerve with him. Mr. Minge stated that he has been a credit union person for a long time, and he had never talked to anybody in Texas who thought that we had not been conservative with our spending, and Texas credit unions pay 100% of the fees that operate this

Department. Mr. Minge believes we have been very conservative in how we fund the operations of this Department, and we do not have waste in Department. He believes the Department is extremely lean, if anything maybe too lean and we've run that way forever. It is appreciated that the Department does that because it's our members' money that funds this Department.

- **Melodie Durst, Executive Director, Credit Union Coalition of Texas,** apologized to Chair Minge if her comments were not delivered as plainly as she could have delivered them. She understands that credit unions pay 100% of the fees that operate this Department, and the Department has operated very lean over many years of involvement. But the reality is that sometimes we just need to take another look at things. Perhaps we need to add staff in the complaint division. Technology is important and we wholeheartedly support adequate funding of this Department, we always have.

After a lengthy discussion, the Chair called a recess from 11:48 a.m. to 12:05 p.m., to allow staff time to make recommended changes to the rule for the Commission to approve for publication and comment in the *Texas Register*.

Mr. Shurtz moved 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. Mrs. Bayless seconded the motion, and the motion was unanimously adopted.

(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. Commissioner Riepen reported

that this 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”.

After a short discussion, Mr. Shurtz moved 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**. Mrs. Bayless 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 12:17 p.m.

David F. Shurtz
Chairman

Isabel Velasquez
Recording Secretary

Distribution: Legislative Reference Library

C.

C. RULEMAKING MATTERS

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

- (1) Adoption, in Part, of Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges)
- (2) Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations)
- (3) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter A (General Provisions), Subchapter B (Organization Procedures), Subchapter J (Changes in Corporate Status), and Subchapter L (Submission of Comments by Interested Parties), and Readoption of Rules
- (4) Recommendation for Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.125 (General Rules)
- (5) Recommendation for Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter J, Section 91.1003 (Mergers/Consolidations)

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

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.
2. The proposed rule is presented to the Commission for consideration.
3. The Commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.
4. The proposed rule is adjusted by staff (if required), furnished to legal counsel, and transmitted to the **Texas Register** for publication as a "proposed" rule.
5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.
6. The Commission may reconsider the rule 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 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 refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
6. The Committee's recommendation is presented to the Commission for consideration.
7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
8. If the Commission approves the proposal for publication, it is transmitted to the ***Texas Register*** for publication as a "proposed" rule amendment.
9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
10. The Commission may reconsider the rule 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.

FEES AND CHARGES

- C. (1) Adoption, in Part, of Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges)

BACKGROUND: The Credit Union Commission (Commission) approved for publication amendments to §97.113, Fees and Charges, at the meeting on March 21, 2025, and they were published in the April 4, 2025, issue of the Texas Register (50 Tex. Reg. 2293 and 50 Tex. Reg. 2296).

COMMENTS RECEIVED AND DEPARTMENT RESPONSES:

Four written comments were received and are grouped below according to topic:

Organize the fees so rules related to the specific type of fee are grouped together.

Two comments were received supporting reorganizing the rule. There were no comments received in opposition to these amendments.

Increase supplemental examination fees from \$50.00 hourly to \$100.00 hourly.

One comment opposed the increase in the fees specifically noting they felt the increase to be arbitrary. Three other comments submitted did not address the fee increase.

In support of the amount, the Department reviewed similar authority provided to the Texas Department of Banking, allowing for specialty examination fees as outlined in 7 Tex. Admin Code §3.36 (h) (2). Their rule allows for a rate not to exceed \$110.00 per examiner hour and any actual travel expense incurred. The current proposal is less than this amount and also includes any travel expense. This proposed fee continues to be less than comparative fees.

For additional support, the Department calculates the average hourly costs of field staff and travel to be approximately \$80, not accounting for any overhead of administration. More expensive and specialized field staff would be utilized in specialized examinations, making the proposed rate reasonable. The last increase in the maximum hourly fee to be charged by the department in special examinations was in March of 2009, or over 16 years ago.

The proposed and current rule provides that the Commissioner “may waive the supplemental fee or reduce the fee, individually or collectively, as he deems appropriate.” This would be available should the fee be an undue financial burden on a credit union, addressing the commentator’s additional concern.

Increase the foreign branch fee from \$500.00 to \$1,000.00; the field of membership expansion fee for a foreign credit union from \$200 to \$1,000.00 for each application; and from \$50 to \$100 per hour expended by an examiner for an examination, if scheduled by the commissioner.

One comment opposed and three other comments submitted did not address the fee increase.

One commentator objected to the proposal stating that the change required an evidence based justification for the increase. We disagree.

Our rules allow for credit unions chartered by other state regulators to operate in Texas. These credit unions do not pay operating fees. We maintain contact information on these institutions, assure there is appropriate insurance coverage and maintain branch listings. We receive, monitor and forward complaints to their state regulator. We also may be requested to process requests for expansions of fields of membership. As a comparison, the operating fee for a state chartered credit union with assets of only \$1 million dollars is \$1,500, which is more than the proposed branch fee for a foreign credit union, regardless of asset size.

Eleven foreign credit unions operating in Texas have an average asset size of \$3.5 billion. This fee increase is rather nominal for a foreign credit union and is reasonable in light of the work to maintain the records and statutorily required annual information in our systems. The current amount of \$100 requires other state credit unions to subsidize the cost of maintaining records or a foreign credit union to operate in this state.

The change to the hourly rate for a review is consistent with the change recommended for Texas state chartered credit unions.

Allow the department to recover legal and SOAH costs from credit unions who cause the cost to be incurred.

One comment supported the proposed amendment; one comment was in opposition and one comment suggested more clarity.

A rule change was proposed to allow for, not require, recovery of legal and hearings costs related to actions taken by regulated credit unions. Specifically, this addressed a recent instance where the Department was charged over \$36,000 by the state office of administrative hearings (SOAH) to hear an appeal. Multiple resolution attempts were unsuccessful. All of these expenses were solely paid by the Credit Union Department, and none paid by the appealing credit union. With an annual budget of \$5 to \$6 million, the impact of these costs are material. The rule was proposed to assure that threatened legal actions would not be used as a way for a credit union to mitigate or avoid regulation. It also would put the burden on the Credit Union directly causing the cost and would continue to allow the commissioner the ability to waive the fee at their discretion.

Three comments were received regarding this rule. One was in strong support, one was in opposition, and one expressed concerns which could be addressed by amendment.

We anticipate that our budgeting and reserve rules will be modified to allow these costs to be charged against reserves and not the current budget. In light of this modification, this amendment is withdrawn until later review.

Allow the commissioner to proposed future administrative fees to recover costs with notice to credit unions and approval by the commission at least every two years.

Four comments were received in opposition to this rule addition.

A new addition to the rule was proposed to provide the opportunity for the Commissioner to submit an administrative fees schedule for Commission approval. Four comments were received in opposition to this rule. In response to the objections, we are recommending the proposed rule is withdrawn.

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

RECOMMENDED ACTION: The Department requests that the Committee recommend the Commission approve and adopt:

- Amendments to 7 Tex. Admin Code § 97.113 as proposed, but withdrawing the following:
- Changes to (e) are withdrawn.
- Proposed addition of (f) is withdrawn.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission take action to order adoption of amendments to Rule § 91.101 and adoption, in part, of the amendments to Rule 7 TAC Section 97.113 as previously published in the Texas Register revised to remove the changes to subpart (e) and remove addition of subpart (f) as a response to public comment.

The Credit Union Commission (Commission) adopts amendments to §97.113, concerning fees and charges, with changes to the text published in the April 4, 2025, issue of the Texas Register

The amendments are adopted as a result of the Department's general rule review.

The Commission received four written comments from Tim Miller with Cooperative Teachers Credit Union, Melodie Durst with Credit Union Coalition of Texas, Gevon Calix with First Service and Suzanne Yashewski with Cornerstone League both in support of or in opposition with respect to selected portions of proposed amendments as detailed below. In response to the comments the proposed amendment is withdrawn, in part.

Organizing the rule to keep subparts addressing a specific type of fee grouped together.

Two comments were received supporting reorganizing the rule. There were no comments received in opposition to these amendments.

Increases supplemental examination fees from \$50.00 hourly to \$100.00 hourly.

One comment opposed the increase in the fees specifically noting they felt the increase to be arbitrary. Three other comments submitted did not address the fee increase.

In support of the amount, the Department reviewed similar authority provided to the Texas Department of Banking, allowing for specialty examination fees as outlined in 7 Tex. Admin Code §3.36 (h)(2). Their rule allows for a rate not to exceed \$110.00 per examiner hour and any actual travel expense incurred. The current proposal is less than this amount and will include any travel expenses. This proposed fee continues to be less than comparative fees.

For additional support, the Department calculates the average hourly costs of field staff and travel to be approximately \$80, not accounting for the overhead of administration. More expensive and specialized staff would be utilized in specialized examinations, making the proposed rate reasonable. The last increase in the maximum hourly fee to be charged by the department in special examinations was in March of 2009, or over 16 years ago.

The proposed and current rule provides that the Commissioner “may waive the supplemental fee or reduce the fee, individually or collectively, as he deems appropriate.” This would be available should the fee be an undue financial burden on a credit union, addressing the commentator’s additional concern.

The Commission therefore adopts this portion of the amendment.

Increases the foreign branch fee from \$500.00 to \$1,000.00; the field of membership expansion fee for a foreign credit union from \$200 to \$1,000.00 for each application; and from \$50 to \$100 per hour expended by an examiner for an examination, if scheduled by the commissioner.

One comment opposed the increase in the fees specifically noting they felt the increase to be arbitrary. Three other comments submitted did not address the fee increase.

Our rules allow for credit unions chartered by other state regulators to operate in Texas. These credit unions do not pay operating fees. We maintain contact information on these institutions, assure there is appropriate insurance coverage and maintain branch listings. We receive, monitor and forward complaints to their state regulator. We also may be requested to process requests for expansions of fields of membership. As a comparison, the operating fee for a state chartered credit union with assets of \$1 million dollars (\$1,500) is the more than the proposed branch fee for a foreign credit union, regardless of asset size.

Eleven foreign credit unions operating in Texas have an average asset size of \$3.5 billion. The department believes this fee is rather nominal for a foreign credit union and is reasonable in light of the work to maintain the records and statutorily required annual information in our systems.

The change to the hourly rate for a review is consistent with the change recommended for Texas state chartered credit unions. The Commission, therefore, adopts this portion of amendment.

Allows the department to recover legal and SOAH costs from credit unions who cause the cost to be incurred.

One comment supported the proposed amendment; one comment was in opposition and one comment suggested more clarity.

This part of the rule change was proposed to allow for, not require, recovery of legal and hearings costs related to actions taken by regulated credit unions. Specifically, this was to address a recent instance where the Department was charged over \$36,000 by the state office of administrative hearings (SOAH) related to an appeal of a modified approval of a field of membership expansion application. Multiple informal resolution attempts were unsuccessful.

All of these expenses were solely paid by the Credit Union Department, and none paid by the appealing credit union. With an annual budget of \$5 to \$6 million, the impact of these costs can become material. The rule was proposed to ensure that threatened legal actions would not be used as a tool for a credit union to mitigate or avoid regulation. It also would put the burden on the Credit Union directly causing the cost, particularly that of an independent third party, such as SOAH, and would continue to allow the commissioner the ability not to assess the fee

In response to the concerns from the comments, this part of the amendment is withdrawn to undergo further review.

Allows for the commissioner to propose future administrative fees to recover costs with notice to credit unions and approval by the commission at least every two years.

Four comments were received in opposition to this part of the rule. In response to the opposition, this part of amendment is withdrawn.

Withdrawal of a part of the proposed amendments in response to objection will not materially impact the substance of the rule with the other proposed amendments.

The amendments are adopted under Texas Finance Code, §15.402, which directs the Commission to establish by rule reasonable and necessary fees for the administration of Title 2, Chapter 15 and Subtitle D, Title 3 of the Finance Code.

The specific section affected by the amended rule is Texas Finance Code, §15.402.

§97.113. Fees and Charges.

(a) Operating Fee.

(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 installment may be adjusted as provided by paragraph (6) of this subsection.

(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) 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.

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) 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) Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of anticipated and actual revenues and projected revenues adjust the amount of either 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) 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 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.

(c) 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) 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. 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 hearing conducted.

(3) Foreign credit union examination fees.

(A) 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) The foreign credit union shall pay a fee of \$100 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) 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) Contract Services. 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 of a credit union, a foreign credit union or related entity, that is performed under a 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.

Isabel Velasquez

From: Suzanne Yashewski <syashewski@cornerstoneleague.coop>
Sent: Monday, May 5, 2025 3:12 PM
To: CUD Email; Karen L. Miller
Cc: Jim Phelps; Caroline Willard
Subject: Cornerstone League Comments on proposed amendments to 97.113
Attachments: Cornerstone League Comments on 97.113.pdf

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To Whom it May Concern,

Attached, please find comments from the Cornerstone Credit Union League regarding proposed amendments to 7 TAC 97.113.

Sincerely,

Suzanne Yashewski



Suzanne Yashewski
Regulatory & Compliance Counsel
Cornerstone League



+1 512 853 8516 direct

syashewski@cornerstoneleague.coop work

6801 Parkwood Blvd. work
Suite 300
Plano, TX 75024

Cornerstone League website

✕ @ in f

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CORNERSTONE LEAGUE

Uniting & Inspiring Credit Unions
to Advance the Greater Good

May 5, 2025

Karen Miller, General Counsel
Credit Union Department
914 East Anderson Lane
Austin, Texas 78752-1699

Sent Via Email to: [CUDMail@cud.texas.gov](mailto:CUDMail@ cud.texas.gov).

Dear Ms. Miller,

I am writing on behalf of the Cornerstone Credit Union League ["Cornerstone"]. Cornerstone presents nearly 600 state and federal credit unions in a 5-state region which includes Texas as well as Arkansas, Kansas, Missouri, and Oklahoma. In the state of Texas, we represent 334 credit unions, approximately 135 of which are Texas state chartered. Cornerstone appreciates the opportunity to comment on the proposed amendments to 7 TAC 97.113.

Proposed Amendments to 97.113, Fees and Charges

In general, Cornerstone feels that the current rule has worked well to date. In addition to the detailed fee schedule, the rule grants the Commissioner the power to increase the fee schedule once each year as needed to match revenue with appropriations (any increase over 5% would require prior approval of the Commission). The operating fee has traditionally been assessed through two installments per year, with the second installment typically discounted for mid-year adjustments.

To my knowledge, we have yet to see a time when the current rule has not provided sufficient funds to cover department expenses. Therefore, Cornerstone questions the need to increase fees now.

Cornerstone believes the current rule provides sufficient flexibility for the department to collect an appropriate amount of operating fees in order to cover expenses. As a result, we oppose the aspects of the proposal that increase fees, including proposed increases to fees for supplemental or special examinations and foreign credit unions. Cornerstone also opposes adding a user-based fee schedule as unnecessary and potentially problematic. Creating a fee schedule that could fluctuate every year or two would add an element of unpredictability for credit unions, negatively impacting their capacity to serve their members and communities.

Regarding the proposed changes to “contract services” which would clarify that the costs for professional, dispute resolution, and legal fees can be passed on to any regulated credit union directly causing the expense, we urge the Commission to carefully reflect unintended consequences when considering whether or not to adopt such a change.

Although it may seem fairer upon first blush to other credit unions which are not involved in a particular challenge, Cornerstone is concerned about the potential chilling effects this provision could have on a credit union’s willingness to pursue legitimate appeals of department or Commission decisions. Footing the bill for the legal costs of both sides would be especially difficult for our smallest asset-size credit unions, essentially preventing them from raising challenges.

Perhaps the Commission could consider alternative approaches, such as an approach that would allocate the cost to the specific credit union involved solely when/if the credit union’s challenge is ultimately unsuccessful, or some other approach that would ensure small credit unions would be able to exercise challenges without undue economic burdens.

Cornerstone supports reorganizing the rule to combine the details of operating fees under the same subsection.

Sincerely,

Suzanne Yashewski
Cornerstone Credit Union League
(512) 853-8516
syashewski@cornerstoneleague.coop

From: Melodie Durst <mdurst@uhcu.org>
Sent: Sunday, May 4, 2025 9:29 PM
To: CUD Email
Subject: Comments on Proposed Changes to 97.113 Fees and Charges

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Dear Credit Union Commission Members:

I am writing on behalf of the Credit Union Coalition of Texas to formally oppose the proposed regulatory change, §97.113 (f), User Fees, allowing the commissioner to implement a fee schedule to offset administrative costs related to processing complaints, applications, and other administrative functions. As an association representing credit unions across the state, we are deeply concerned about the long-term implications of the proposed new rule.

We have consistently supported and continue to advocate on behalf of the Texas Credit Union Department (Department). And while we understand the need for the Department to manage its administrative costs, we believe that implementing the proposed changes will ultimately lead to additional fees on credit unions. Texas credit unions operate on a not-for-profit basis, prioritizing the financial well-being of their members over profits. Introducing additional fees now or in the future could lead to increased costs for members, reducing their access to essential financial services.

Moreover, we believe that the current regulatory framework already provides sufficient resources for oversight and examination without the need for new authorities to assess additional user fees. Existing mechanisms allow the Department to fulfill its responsibilities effectively, and adopting new policies allowing for the imposition of new fees may contradict the governor's directive for state agencies to enhance efficiency and reduce costs.

Furthermore, this proposal raises concerns about transparency and accountability. Although the fee schedule is subject to approval by the commission and will be reviewed every two years, the potential for fluctuating fees may add an element of unpredictability for credit unions. This uncertainty could hinder their ability to plan and budget effectively, ultimately impacting their capacity to serve their communities.

We urge you to reconsider the implementation of this new policy and instead focus on utilizing the existing regulatory structure and budgeting process to achieve the intended outcomes.

Thank you for considering our concerns regarding this important issue. We hope to engage in a constructive dialogue to find a solution that supports both the regulatory needs of the Department and the vital role of credit unions in our communities.

Sincerely,

Melodie Durst
Executive Director
Credit Union Coalition of Texas
P.O. Box 171089
Austin, TX 78717
512.435.4214

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Isabel Velasquez

From: Tim Miller <tim@coopteachers.com>
Sent: Friday, May 2, 2025 10:16 AM
To: CUD Email
Subject: Comment Letter
Attachments: 2025.05.02 Comment Letter.pdf

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Please see the attached letter.

Tim



TIM MILLER

President & CEO

P 903.787.8199 F 903.561.9394

coopteachers.com 1424 WSW Loop 323 Tyler, TX 75701



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May 2, 2025

Karen Miller, General Counsel
Credit Union Department
914 E Anderson LN
Austin TX 78752-1699

Via email: cudmail@tud.texas.gov

Subject: Comment on Proposed Amendments to 7 TAC §97.113 – Fees and Charges

Dear Ms. Miller,

Thank you for the opportunity to provide comments on the proposed amendments to 7 TAC §97.113, as published in the April 4, 2025, issue of the Texas Register. We appreciate the Department's ongoing effort to modernize its rules while ensuring a fair and transparent supervisory process.

We respectfully submit the following comments and concerns regarding the proposed provisions related to Contract Services (§97.113(e)) and Administrative Fees (§97.113(f)):

Contract Services (§97.113(e))

While we understand the Department's intent to allocate third-party costs to the specific credit union that causes such expenses, we are concerned about the potential chilling effect this provision could have on a credit union's willingness to pursue legitimate appeals of Department or Commission decisions. Therefore, we recommend that the proposed changes to §97.113(e) be revised to address the concerns outlined below.

As drafted, the rule could be interpreted to allow the Department to impose legal, adjudicative, or examination-related costs even when a credit union is ultimately successful in its appeal. This raises concerns that the rule could be used—intentionally or not—as a mechanism to discourage credit unions from challenging agency actions or submitting applications. Regulatory oversight should never be enforced in a way that undermines a credit union's right to due process.

Importantly, we note that cost allocation in such disputes is already governed by existing law and administrative procedures in Rule §93.214 Recovery of Department Costs. As outlined in the rule, costs incurred in proceedings before the State Office of Administrative Hearings (SOAH) may be apportioned by the Administrative Law Judge (ALJ) in accordance with applicable law.

Any rule adopted by the Commission should explicitly preserve this adjudicative discretion and clarify that credit unions will not be responsible for costs in matters where they prevail. This rule should not preempt the discretion of the ALJ and must acknowledge that credit unions who substantially prevail should not be burdened with costs.

To preserve fairness and due process, we recommend the final rule:

- Include language clarifying that no costs will be assessed against a credit union that prevails in a contested case hearing.
- Recognize that cost allocation in administrative proceedings falls under the authority of the presiding ALJ in accordance with governing rules and statutes.
- Require the Department to develop and publish criteria outlining when and how such charges will be assessed, along with a process for disputing or appealing fee assessments.
- Require the Department to notify affected institutions in advance of any potential fee liability stemming from contract services.

Administrative Fees (§97.113(f))

We have serious concerns about the vague and potentially expansive scope of this provision. The rule allows for fees related to “processing complaints, applications, and other administrative functions,” but fails to define what constitutes an “administrative function.”

Additionally, many of the activities mentioned appear to be already encompassed within the annual operating fees that all credit unions currently pay. The introduction of a separate administrative fee, without specificity or limitations, creates uncertainty and the potential for double-charging for functions already funded.

We are also concerned about the possibility of credit unions being charged for the handling of complaints that are clearly without merit or factually incorrect. Credit unions have no control over whether a consumer files a complaint—regardless of its validity—and should not be penalized for frivolous or baseless allegations. This is particularly troubling in an environment where a single complaint can trigger multiple layers of review. For example, a single unsubstantiated complaint may trigger follow-up calls, internal investigations, and formal responses.

To address these concerns, we respectfully request the following:

- The term “administrative function” be clearly defined, with specific examples and exclusions.
- A provision clarifying that fees will not be assessed in connection with meritless or unsubstantiated complaints.
- A clear explanation of how these administrative activities differ from services already supported by the operating fee.
- A requirement that any proposed administrative fee schedule be subject to public comment, not just Commission approval.

In closing, while we share the Department's interest in fair cost recovery, it must not come at the expense of procedural fairness or institutional rights. It is critical that the rules do not create an environment where institutions are discouraged from asserting their rights or seeking recourse when they believe a decision is unjust. We appreciate the Department's consideration of our feedback and its continued partnership with the credit union community.

Sincerely,

/s/ Tim Miller

Tim Miller

President/CEO

Isabel Velasquez

From: Gevon Calix <gcalix@fscu.com>
Sent: Thursday, May 1, 2025 5:02 PM
To: CUD Email
Cc: syashewski@cornerstoneleague.coop
Subject: FSCU Comments on Proposed Amendments to 97.113 & 91.101
Attachments: FSCU Comments to Proposed Amendments 97.113 and 91.101.pdf

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Good afternoon,

First Service Credit Union's commentary on the proposed amendments to TAC §97.113 & §91.101 is attached.

Thank you for the opportunity to provide these comments. We look forward to the Department's thoughtful consideration.

Outstanding Regards,

Gevon Calix
VP of Compliance & Corp Dev

Direct: 713-676-4350



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May 1, 2025

Texas Credit Union Department
Attn: Karen Miller, General Counsel
914 East Anderson Lane
Austin, TX 78752
Sent via electronic mail to CUDMail@tud.texas.gov

Subject: Formal Comment on Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges) and 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations)

Dear Ms. Miller,

I am writing to provide formal comments in response to the proposed amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges) and to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations), as published in the Texas Register on April 4, 2025. Specifically, First Service Credit Union (FSCU) wishes to express strong and unequivocal concerns regarding the proposed amendments to the Department's ability to implement user-based fees as well as an increase in the amount of established fees.

1. Comments on Proposed Amendments to Section 97.113 (Fees and Charges)

While we understand the intent of the proposed amendments to provide greater transparency and consistency regarding fees and charges applied to credit unions, we would like to highlight the following comments, concerns and recommendations:

- a. **Organize the rule by grouping the types of fees authorized.** First Service Credit Union supports the proposed change to organize the rule to enhance clarity.
- b. **Clarify that the costs for professional, dispute resolution and legal fees can be passed on to any regulated Credit Union directly causing the expense.** First Service Credit Union strongly supports the clarification that fees related to professional services, dispute resolution, and legal costs can be passed on to the credit union directly

responsible for incurring the expense. It is fundamentally unjust to burden credit unions with fees for situations over which they have no control.

- c. **Increase the hourly rates for special examinations from \$50.00 to \$100.00 per hour.** First Service Credit Union vehemently opposes the proposed 100 percent increase in the hourly rate for special examinations from \$50 to \$100 per hour. This increase is unsubstantiated and appears arbitrary at best. It is irresponsible to impose such a financial burden on credit unions, particularly those already struggling with financial difficulties. The fact that credit unions selected for these special examinations cannot avoid or opt out, makes this significant rate increase even more problematic. Given the current financial climate, a dramatic fee increase of this magnitude is not only unreasonable, but also financially irresponsible. The Texas Credit Union Department is urged to provide a detailed, evidence-based justification for the increase.
- d. **Increase fees charged to foreign credit unions.** While First Service Credit Union has no direct interest in the increase of fees for foreign credit unions, the same concern applies here. The proposed 100 percent increase lacks any justification and requires transparency. The Texas Credit Union Department is urged to provide a detailed, evidence-based justification for the increase.
- e. **Provide for the ability of the Commission to implement user-based fees in the future.** We firmly oppose the proposed introduction of user-based fees in the future. Texas-chartered credit unions already contribute significantly through an annual operating assessment fee based on total asset size. Rather than introducing additional fees, we strongly urge the Department to reevaluate the current operating fee structure, as recommended in the most recent Sunset Advisory Commission Report. Historically, the Department has assessed the annual operating fee in two installments per year, with the second installment typically discounted to account for mid-year adjustments in projected revenues and expenditures, as well as any unspent funds from the previous fiscal year. First Service Credit Union recommends the Department structure the assessment in a manner that fully supports operational and related expenses, thereby eliminating the need for both installment discounts and supplemental fees, such as user-based fees. There is no logical or justified reason to impose further fees on credit unions, especially when they are already contributing an excess amount through the annual operating assessment fee. Further, this proposed change fails to consider the financial strain on credit unions given the current economic environment of the industry.

2. Comments on Proposed Amendments to Section 91.101 (Definitions and Interpretations)



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The proposed amendments to Section 91.101 aim to refine the definitions and interpretations relevant to the operations of credit unions. Specifically, we have the following comments:

- a. **Define the term "political subdivision".** First Service Credit Union supports the proposed change to clarify the definition of "political subdivision." However, the Department must take extra care to ensure that definitions are consistent across all relevant sections of the Texas Administrative Code (TAC). Discrepancies in definitions between different sections could result in conflicting interpretations that confuse stakeholders and lead to unintended non-compliance.
- b. **Change the definition of Unifying Characteristics to include political subdivision instead of political jurisdiction.** First Service Credit Union supports the proposed change to provide clarity to the rule. Again, the Department must ensure that definitions across all relevant regulations are harmonized to avoid conflicting interpretations. Any discrepancies between definitions in different sections of the Texas Administrative Code (TAC) could lead to confusion and unintended non-compliance.
- c. **Renumber the definitions to reflect the additional definition.** First Service Credit Union supports the proposed change to provide organization and clarity to the rule.

In summary, while First Service Credit Union supports enhanced clarity and organization to the Texas Administrative Code, the Department is urged to reconsider these proposed amendments, which impose undue financial burdens on credit unions without adequate justification. The Department's actions here risk harming the very institutions it seeks to regulate—institutions that are essential to the financial stability of Texas communities.

We expect a thorough review of these comments, and we strongly encourage the Department to make the necessary changes before moving forward with these amendments.

Thank you for the opportunity to provide these comments. We look forward to the Department's thoughtful consideration of our comments and objections.

Sincerely,

A handwritten signature in black ink, appearing to read "Gevon Calix", with a stylized, cursive-like script.

Gevon Calix

VP of Compliance and Corporate Development
First Service Credit Union

DEFINITIONS AND INTERPRETATIONS

- C. (2) Adoption of Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations)

BACKGROUND: The Credit Union Commission (Commission) approved for publication amendments to 7 TAC §91.101 at the meeting on March 21, 2025, and they were published in the April 4, 2025, issue of the Texas Register (50 Tex. Reg. 2293 and 50 Tex. Reg. 2296).

Comments: One comment was received in support of all the changes to this section. No comments were received in opposition to the amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend the Commission approve and adopt the proposed amendments to 7 Tex. Admin Code § 91.101 as proposed without changes.

RECOMMENDED MOTION: : I move that the Committee recommend that the Commission approve and adopt take action to order adoption of amendments to Rule § 91.101.

The Credit Union Commission (the Commission) adopts the amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter A, §91.101, concerning definitions and interpretations, with changes to the adopted text as published in the April 4, 2025, issue of the *Texas Register*.

The amended rule amends definition of the term "Unifying Characteristics" and adds a definition for "Political Subdivision". The amendment renumbers subsequent definitions to accommodate the newly added definition.

The Commission received one written comment in support of the proposed amendments to the rule from Gevon Calix with First Service Credit Union.

The rule changes are adopted 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.

§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, as defined in this rule.

(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) Principal office--the home office of a credit union.

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

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

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

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

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

(38) 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) 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) 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) 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.

Isabel Velasquez

From: Gevon Calix <gcalix@fscu.com>
Sent: Thursday, May 1, 2025 5:02 PM
To: CUD Email
Cc: syashewski@cornerstoneleague.coop
Subject: FSCU Comments on Proposed Amendments to 97.113 & 91.101
Attachments: FSCU Comments to Proposed Amendments 97.113 and 91.101.pdf

CAUTION: This email originated from outside of the Credit Union Department's email system. DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.

Good afternoon,

First Service Credit Union's commentary on the proposed amendments to TAC §97.113 & §91.101 is attached.

Thank you for the opportunity to provide these comments. We look forward to the Department's thoughtful consideration.

Outstanding Regards,

Gevon Calix
VP of Compliance & Corp Dev

Direct: 713-676-4350



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May 1, 2025

Texas Credit Union Department
Attn: Karen Miller, General Counsel
914 East Anderson Lane
Austin, TX 78752
Sent via electronic mail to CUDMail@tud.texas.gov

Subject: Formal Comment on Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges) and 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations)

Dear Ms. Miller,

I am writing to provide formal comments in response to the proposed amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113 (Fees and Charges) and to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations), as published in the Texas Register on April 4, 2025. Specifically, First Service Credit Union (FSCU) wishes to express strong and unequivocal concerns regarding the proposed amendments to the Department's ability to implement user-based fees as well as an increase in the amount of established fees.

1. Comments on Proposed Amendments to Section 97.113 (Fees and Charges)

While we understand the intent of the proposed amendments to provide greater transparency and consistency regarding fees and charges applied to credit unions, we would like to highlight the following comments, concerns and recommendations:

- a. **Organize the rule by grouping the types of fees authorized.** First Service Credit Union supports the proposed change to organize the rule to enhance clarity.
- b. **Clarify that the costs for professional, dispute resolution and legal fees can be passed on to any regulated Credit Union directly causing the expense.** First Service Credit Union strongly supports the clarification that fees related to professional services, dispute resolution, and legal costs can be passed on to the credit union directly

- responsible for incurring the expense. It is fundamentally unjust to burden credit unions with fees for situations over which they have no control.
- c. **Increase the hourly rates for special examinations from \$50.00 to \$100.00 per hour.** First Service Credit Union vehemently opposes the proposed 100 percent increase in the hourly rate for special examinations from \$50 to \$100 per hour. This increase is unsubstantiated and appears arbitrary at best. It is irresponsible to impose such a financial burden on credit unions, particularly those already struggling with financial difficulties. The fact that credit unions selected for these special examinations cannot avoid or opt out, makes this significant rate increase even more problematic. Given the current financial climate, a dramatic fee increase of this magnitude is not only unreasonable, but also financially irresponsible. The Texas Credit Union Department is urged to provide a detailed, evidence-based justification for the increase.
 - d. **Increase fees charged to foreign credit unions.** While First Service Credit Union has no direct interest in the increase of fees for foreign credit unions, the same concern applies here. The proposed 100 percent increase lacks any justification and requires transparency. The Texas Credit Union Department is urged to provide a detailed, evidence-based justification for the increase.
 - e. **Provide for the ability of the Commission to implement user-based fees in the future.** We firmly oppose the proposed introduction of user-based fees in the future. Texas-chartered credit unions already contribute significantly through an annual operating assessment fee based on total asset size. Rather than introducing additional fees, we strongly urge the Department to reevaluate the current operating fee structure, as recommended in the most recent Sunset Advisory Commission Report. Historically, the Department has assessed the annual operating fee in two installments per year, with the second installment typically discounted to account for mid-year adjustments in projected revenues and expenditures, as well as any unspent funds from the previous fiscal year. First Service Credit Union recommends the Department structure the assessment in a manner that fully supports operational and related expenses, thereby eliminating the need for both installment discounts and supplemental fees, such as user-based fees. There is no logical or justified reason to impose further fees on credit unions, especially when they are already contributing an excess amount through the annual operating assessment fee. Further, this proposed change fails to consider the financial strain on credit unions given the current economic environment of the industry.

2. Comments on Proposed Amendments to Section 91.101 (Definitions and Interpretations)



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The proposed amendments to Section 91.101 aim to refine the definitions and interpretations relevant to the operations of credit unions. Specifically, we have the following comments:

- a. **Define the term "political subdivision".** First Service Credit Union supports the proposed change to clarify the definition of "political subdivision." However, the Department must take extra care to ensure that definitions are consistent across all relevant sections of the Texas Administrative Code (TAC). Discrepancies in definitions between different sections could result in conflicting interpretations that confuse stakeholders and lead to unintended non-compliance.
- b. **Change the definition of Unifying Characteristics to include political subdivision instead of political jurisdiction.** First Service Credit Union supports the proposed change to provide clarity to the rule. Again, the Department must ensure that definitions across all relevant regulations are harmonized to avoid conflicting interpretations. Any discrepancies between definitions in different sections of the Texas Administrative Code (TAC) could lead to confusion and unintended non-compliance.
- c. **Renumber the definitions to reflect the additional definition.** First Service Credit Union supports the proposed change to provide organization and clarity to the rule.

In summary, while First Service Credit Union supports enhanced clarity and organization to the Texas Administrative Code, the Department is urged to reconsider these proposed amendments, which impose undue financial burdens on credit unions without adequate justification. The Department's actions here risk harming the very institutions it seeks to regulate—institutions that are essential to the financial stability of Texas communities.

We expect a thorough review of these comments, and we strongly encourage the Department to make the necessary changes before moving forward with these amendments.

Thank you for the opportunity to provide these comments. We look forward to the Department's thoughtful consideration of our comments and objections.

Sincerely,

A handwritten signature in black ink, appearing to read "Gevon Calix", with a stylized, flowing script.

Gevon Calix

VP of Compliance and Corporate Development
First Service Credit Union

MANDATORY RULE REVIEW

- C. (3) Adoption of the Rule Review of 7 TAC, Part 6, Chapter 91, Subchapter A (General Provisions), Subchapter B (Organization Procedures), Subchapter J (Changes in Corporate Status), and Subchapter L (Submission of Comments by Interested Parties), 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 91, Subchapter A, (General Provisions), Subchapter B (Organization Procedures), Subchapter J (Changes in Corporate Status), and Subchapter L (Submission of Comments by Interested Parties), 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 June 20, 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 adopt 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 91, Subchapter A (General Provisions), Subchapter B (Organization Procedures), Subchapter J (Changes in Corporate Status), and Subchapter L (Submission of Comments by Interested Parties), and Readoption of Rules continue to exist and that Commission readopt the rules in this chapter.

The Texas Credit Union Commission (Commission) has completed its review of 7 TAC, Part 6, Chapter 91, Subchapter A (General Provisions), Subchapter B (Organization Procedures), Subchapter J (Changes in Corporate Status), and Subchapter L (Submission of Comments by Interested Parties), and Readoption of Rules

These rules were reviewed as a result of the Department's quadrennial rule review under Texas Government Code Section 2001.039 and the Department's rule review plan approved at the March 22, 2024, Commission meeting.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter A (General Provisions), Subchapter B (Organization Procedures), Subchapter J (Changes in Corporate Status), and Subchapter L (Submission of Comments by Interested Parties) were published on June 20, 2025, issue of the *Texas Register* (50 Tex. Reg. 3649). The Department received no comments on the notice of intention to review.

After reviewing these rules, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapters A, B, J, & L, §§91.101, 91.103, 91.104, 91.105, 91.110, 91.115, 91.120, 91.125, 91.201 to 91.214, 91.1003 to 91.1010 and 91.3001 to 91.3002, in their entirety in accordance with the requirements of Texas Government Code, Section 2001.039. However, the Commission has determined certain sections should be amended and will propose changes in a separate section of the *Texas Register*. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapters A, B, J, and L.

The Department hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 jurisdiction, 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
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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) Principal office—the home office of a credit union.

(28) Protestant—a credit union that opposes or objects to the relief requested by an applicant.

(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.

(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.

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

(32) Resident of this state—a person physically located in, living in or employed in the state of Texas.

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

(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.

(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.

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

(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.

(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.

(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.

(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.

§91.103. Public Notice of Department Decisions.

The commissioner shall cause notice of final actions taken by the department on certain activities to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications within 30 days of the action becoming final. The activities covered by this requirement are:

- (1) an application for incorporation under Texas Finance Code §122.001;
 - (2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;
 - (3) a request for an amendment to a credit union's bylaws for the expansion of its field of membership under Texas Finance Code §122.011;
 - (4) an application for merger or consolidation under Texas Finance Code §122.152;
 - (5) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013; and
 - (6) an application for conversion of a credit union's certificate of incorporation under
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Texas Finance Code §§122.201, 122.202, 122.203, or 91.1007 of this chapter (relating to conversion to a Mutual Savings Institution).

§91.104. Public Notice and Comment on Certain Applications.

(a) Upon receipt of a complete application for authorization to be granted by the department, the commissioner shall cause notice of such application to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications at least 30 days prior to taking action on the request. The activities covered by this requirement are:

- (1) an application for incorporation under Texas Finance Code §122.001;
- (2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;
- (3) a request for an amendment to a credit union's bylaws for an expansion of its field of membership under Texas Finance Code §122.011;
- (4) an application for merger or consolidation under Texas Finance Code §122.152;
- (5) an application for conversion of a credit union's certificate of incorporation under Section 91.1007 of this chapter (relating to conversion to a mutual savings institution); and
- (6) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013.

(b) The commissioner may waive or delay notice of applications under subsection (a) of this section when a waiver or delay is in the public interest. The commissioner shall consider the welfare and stability of the affected credit union(s) in determining the public interest. If the commissioner determines that delaying public notice is in the public interest, the notice of application shall be published in each publication at the earliest feasible time.

§91.105. Acceptance of Other Application Forms.

Notwithstanding other requirements of this chapter, if another state or federal regulator's application and forms provide all the information required by Texas law, the commissioner may accept those forms. This does not limit the commissioner's power to require additional information necessary to complete an application or other form.

§91.110. Protest Procedures for Applications.

A protestant to an application for authorization to be granted by the commissioner must file a written notice of protest, in such form as the commissioner may prescribe, within 30 days of the date that notice of the application is published in either the Texas Register or the department newsletter, whichever is later. The notice of protest must provide all information that the protestant wishes the commissioner to consider in evaluating the application.

§91.115. Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For the purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

(c) Safety evaluations.

(1) The credit union owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually, unless the machine is exempted under the Finance Code §59.302.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The credit union owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the credit union owner or operator of the machine.

(d) Notice. A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each member whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The credit union issuer must furnish the notice to its member whenever an access device is issued or renewed. If the credit union furnishes an access device to more than one member on the same account, the credit union is not required to furnish the notice to more than one of the members.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

- (A) security at walk-up or drive-up unmanned teller machines;
 - (B) protection of the member's code or personal identification numbers;
 - (C) procedures for reporting a lost or stolen access device;
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(D) reaction to suspicious circumstances;

(E) safekeeping and secure disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(F) the inadvisability of surrendering information about the member's access device over the telephone or the Internet, unless to a trusted merchant in a call or transaction initiated by the member;

(G) safeguarding and protecting the member's access device, such as a recommendation that the member treat the access device as if it was cash;

(H) protection against unmanned teller machine fraud, such as a recommendation that the member promptly review the member's monthly statement and compare unmanned teller machine receipts against the statement; and

(e) other recommendations that the credit union reasonably believes are appropriate to facilitate the security of its unmanned teller machine users.

(f) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If a credit union owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the credit union shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(g) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

§91.120. Posting of Notice Regarding Certain Loan Agreements.

- (a) As required by the Business and Commerce Code §26.02, all credit unions are required to conspicuously post notices informing members of the requirements that certain loan agreements must be in writing. The notice must include the language and be in the format prescribed by the Finance Commission of Texas in §3.34 of this title (relating to Posting of Notice in All Financial Institutions).
- (b) Each credit union shall post the notice required by subsection (a) in the lobby of each of its offices other than off-premises electronic deposit facilities.

§91.121. Complaint Notices and Procedures.

- (a) Purpose. This section implements Finance Code §15.408, which requires the Department to maintain a system to promptly and efficiently act on each complaint filed with the Department.

- (b) Required Notice.

(1) Credit unions must provide their members with a notice that substantially conforms to the language and form of the following notice in order to let its members know how to file complaints:

“If you have a problem with the services provided by this credit union, please contact us at:

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address.

The credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. If any dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department through one of the means indicated below: In Person or U.S. Mail: 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Facsimile Number: (512) 832-0278; email: [complaints@cud.texas.gov](mailto:complaints@ cud.texas.gov), Website: www.cud.texas.gov.”

(2) The title of this notice shall be “COMPLAINT NOTICE” and must be in all capital letters and boldface type.

(3) The credit union must provide the notice as follows:

(A) In each area where a credit union typically conducts business on a face-to-face basis, the required notice must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) If a credit union maintains a website, the required notice or a link to the required notice must be conspicuously posted on the homepage of the website.

(C) If a credit union distributes a newsletter, it must include the notice on approximately the same date at least once each year in any newsletter distributed to its members.

(D) If a credit union does not distribute a newsletter, the notice must be included with any privacy notice the credit union is required to provide or send its members.

- (c) Filing, Receipt, and Handling of Complaints.

(1) The Department shall make available, on its public website (www.cud.texas.gov) and at its office, information on how to file a complaint.

(2) A person who alleges that a credit union has committed an act or failed to perform an act that may constitute a violation of the Texas Credit Union Act or Department rules may file a complaint in writing with the Department. The complainant may complete and submit to the Department the complaint form the Department maintains at the Department’s office and on its public website, or the complainant may submit a complaint in a letter that addresses the matters covered by

the complaint form. At a minimum, all complaints should contain information necessary for the proper processing of the complaint by the Department, including, but not limited to:

- (A) complainant's name and how the complainant may be contacted;
- (B) name and address of the credit union against whom the complaint is made;
- (C) a brief statement of the nature of the complaint and relevant facts, including names of persons with knowledge, times, dates, and location; and

(D) Copies of any documents or records related to the complaint (original records should not be sent with a complaint).

(3) Anonymous complaints may be accepted by the Department, but the lack of a witness or the inability of the Department to secure additional information from the anonymous complainant may result in the Department's inability to secure sufficient evidence to pursue action against a credit union.

(4) The Department will review all complaints to determine whether they are within the Department's jurisdiction or authority to resolve and will send an acknowledgement letter to the complainant within five (5) business days of receipt of a complaint. At least quarterly until final disposition of the complaint, the Department shall provide status updates to the complainant and respondent credit union, orally or in writing, unless the notice would jeopardize an investigation.

(5) Upon determining that a complaint is within the Department's jurisdiction, the Department will inform the credit union respondent of the complaint and will request a written response from the credit union. Along with a request for response, the Department will transmit to the credit union a copy of the complaint and any attachments. Within fifteen (15) days from the date of the request for response, unless the period is extended by the Department, the credit union shall provide a substantive response and set forth the credit union's position with respect to the allegations in the complaint, which shall include all data, information and documentation supporting its position, or a description of corrective measures taken or intended to be taken. The Department may request, and the complainant and respondent shall provide, additional information or further explanation at any time during the review of the complaint.

(6) Once the Department has received the documentation from both parties, the Department will review the information and will process the complaint in accordance with the rules of the Department. The Department will advise both parties in writing of the final disposition of the complaint.

(7) The Department shall maintain a file on each complaint filed with the agency. The file shall include:

- (A) the complainant's name and relationship to the institution;
- (B) the date the complaint is received and resolved or closed by the Department;
- (C) the basis of the complaint;
- (D) a summary of the results of the review of the complaint including issuance of any enforcement action; and
- (E) an explanation of the reason the file was closed, if the Department closed the file without taking action other than to review the complaint.

(8) The Department will maintain a database of complaints in order to identify trends or issues related to violations of state laws under the Department's jurisdiction.

(d) **Complaints Closed with No Action Beyond Review.** Certain complaints and disputes may be closed with no action taken other than to review the complaint. Such complaints may include those that are not within the Department authority to investigate or adjudicate, and which may be referred to as non-jurisdictional complaints. The Department, for example, will not address complaints concerning contractual matters or internal credit union practices that are not governed by the statutes or rules that the Department implements or enforces. The Department also may close without taking action other types of complaints, including undocumented factual disputes between a person and a credit union and complaints involving matters that are the subject of a pending lawsuit. The Department does not offer legal assistance and cannot represent individuals in settling claims or recovering damages. The Department does not own, operate, or control credit unions, and the Department does not establish their operating policies and procedures. Therefore, the Department may close without taking action complaints concerning the range of services a credit union offers, complaints about bad customer service, and disagreements over specific credit union policies, practices, or procedures, or about other matters that are not governed by a law or rule under the Department's jurisdiction. The Department will inform the complainant and respondent credit union when a complaint is closed with no action taken and will inform them of the reason for closing the case.

(e) **Privacy.** The information collected from complainants and respondents is solicited to provide the Department with information that is necessary and useful in reviewing complaints received from persons regarding their interactions with a credit union. A complainant is not required to give the Department any information; however, without such information, the Department's ability to complete a review, to investigate, or to prosecute a matter may be hindered. It is intended that the information a person provides to the Department will be used within the Department and for the purpose of investigating and prosecuting a complaint. A person should not include personal or confidential information such as social security, credit card, or account numbers, or dates of birth when corresponding with the Department. If it is necessary to supply a document that contains personal or confidential information, the information should be redacted before the document is submitted to the Department.

(f) The Department will annually produce a statistical analysis of complaints processed and related enforcement actions for the preceding fiscal year which must include at a minimum:

- (1) total complaints filed, closed and outstanding;
- (2) resolved complaints aggregated by source, basis of complaint, disposition, jurisdictional vs. non-jurisdiction, regulatory vs. non-regulatory penalties or fees assessed and the average number of days to resolve.

§91.125. Accuracy of Advertising.

(a) As used in this rule, an advertisement is any informational communication, including oral, written, electronic, broadcast or any other type of communication, made to members, prospective members, or to the public at large in any manner designed to attract attention to the business of a credit union.

(b) No credit union shall disseminate or cause the dissemination of any advertisement that is in any way intentionally or negligently false, deceptive, or misleading. An advertisement shall be deemed by the Commissioner to be intentionally or negligently false, deceptive, or misleading if it:

- (1) contains materially false claims or misrepresentations of material facts;
- (2) contains materially implied false claims or implied misrepresentations of material fact;
- (3) omits material facts;
- (4) makes a representation likely to create an unjustified expectation about credit union products or services;

(5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;

(6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and

(7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

Subchapter B. Organization Procedures

§91.201. Incorporation Procedures.

- (a) An application to incorporate a credit union shall be in writing and supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of incorporation.
- (b) Business Plan. The application must include a business plan that covers three years and provides detailed explanations of actions that are proposed to accomplish the primary functions of the credit union. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will maintain adequate capital to support its operations. Specifically the plan must:
- (1) Describe the credit union's business, including the products, member services, and other activities;
 - (2) Provide quarterly pro forma financial information for the three years of operation, including annual totals for the Income Statement;
 - (3) Describe in detail all of the assumptions used to prepare the projected financial information;
 - (4) Discuss the capital goals and the means to achieve them;
 - (5) Discuss the overall marketing/advertising strategy to reach potential members;
 - (6) Discuss the credit union's strategy for obtaining required share and deposit insurance protection for its members' accounts; and
 - (7) Describe the economic forecast for the three years of the plan.
- (c) The commissioner shall determine whether or not an application is complete within thirty days of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.
- (d) Upon the determination that an application is complete, the commissioner shall make or cause to be made an investigation and examination of the facts concerning the applicant. It is essential that the investigation and examination confirm to the satisfaction of the commissioner that the proposed institution will have a reasonable opportunity to succeed.
- (e) Proposed credit unions must investigate the possibility of an overlap with existing state or federal credit unions doing business in this state prior to submitting an application. When an overlap situation does arise, officials of the involved entities must attempt to resolve the overlap issue. Typically, an overlap will not be considered adverse to the overlapped credit union if:
- (1) the group has fewer than 3000 primary potential members or the overlap is otherwise incidental in nature;
 - (2) the overlapped credit union does not object to the overlap;
 - (3) there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time; or
 - (4) a single occupational or associational based credit union overlaps a community chartered credit union.
- (f) When the applicant and a credit union agree and/or the commissioner has determined that overlap protection is appropriate, an exclusionary clause will be included in the proposed field of membership for a period of 24 months from the date the proposed credit union commences business. The commissioner, for good cause shown, may extend this period for an additional 24 months.
- (g) The commissioner may approve the application conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been
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met within the time specified in the approval order or any extension as set forth in Finance Code §122.006.

§91.202. Bylaw and Articles of Incorporation Amendments.

- (a) The Standard Bylaws for State Chartered Credit Unions ("Standard Bylaws"), approved by the commission on February 20, 2004, or as subsequently revised or amended, constitute the bylaws which shall be used by credit union incorporators.
- (b) The commissioner is expressly authorized to approve deviations from and amendments to the standard bylaws, unless the deviation or amendment violates applicable law.
- (c) Credit unions desiring to amend articles of incorporation or bylaws must submit a written application, in such form as the commissioner may prescribe. The application shall include the text of the amendment, the date that the board of directors adopted the amendment, a brief statement explaining the purpose of the amendment, information regarding the financial impact on the credit union if the amendment is approved, and any other information the commissioner may require to make a decision on the amendment.
- (d) The commissioner shall determine whether or not an application is complete within thirty day of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.
- (e) The commissioner does not need to provide notice as prescribed in §91.103 (relating to Public Notice of Department Decisions and §91.104 (relating to Public Notice and Comment on Certain Applications) for applications that apply for standard optional field of membership provisions (1), (2), (3), and (4) as contained in the Standard Bylaws "Appendix A".
- (f) A credit union's board of directors may amend its bylaws to adopt any standard bylaw without approval by the commissioner provided: (1) the wording of the amendment is identical to the Standard Bylaws; and (2) the credit union submits a completed, fully executed Certification of Resolution of Amendment to Credit Union Bylaws ("Certification") to the commissioner. The commissioner will promptly acknowledge receipt of the Certification. The amendment will be effective as of the date the commissioner acknowledges receipt of the Certification.

§91.203. Share and Deposit Insurance Requirements.

- (a) All credit unions in the State of Texas shall obtain share insurance protection as provided in Chapter 95 of this title (pertaining to Share and Depositor Insurance Protection).
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(b) With the approval of the commissioner, and if recognized by its insuring organization, a credit union may, from time to time as determined by its board of directors, issue uninsured membership shares which are subordinate to all other claims, including creditors, shareholders, and the insuring organization. The commissioner may approve the issuance of such accounts conditioned upon specific requirements being met.

§91.205. Credit Union Name.

(a) Unless a name change or assumed name has been approved by the commissioner in accordance with the Act and these rules, a credit union shall do business under the name in which its certificate of incorporation was issued.

(b) Subject to the requirements of this rule, a credit union may adopt an assumed name. The credit union's official name, however, must be used in all official or legal communications or documents, which includes account and membership agreements, loan contracts, title documents (except for vehicle titles, which may also be under the credit union's assumed name), account statements, checks, drafts, and correspondence with the Department or the National Credit Union Administration. The assumed name may also be used in those materials so long as it is identified as such (e.g. Generic Credit Union dba GCU). Further, a credit union using an assumed name shall clearly disclose the credit union's official name when the assumed name is used on any signs, advertising, mailings, or similar materials.

(c) A credit union shall not use any name other than its official name until it has received a certificate of authority to use an assumed business name from the commissioner and has registered the designation with the Secretary of State and the appropriate county clerk.

(d) The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business with an office in this state.

(e) Credit union officials are responsible for complying with state and federal law applicable to corporate and assumed names. The Department does not have the power to determine or settle competing claims to a name under other statutes or under common law. Even though the Department may have issued a certificate of authority (based on the above criteria), a credit union could still be infringing on the naming rights of other parties. In particular, if the name a credit union selects is similar to a name already protected by state or federal trademark, a credit union could be forced to stop using the name. This can also be the case if another entity is already using a similar name in a related field, even if the entity does not own a state or federal registration.

(f) Before using an assumed name, a credit union shall take reasonable steps to ensure that use of the name will not cause a reasonable person to believe the credit union's different facilities are different credit unions or to believe that shares or deposits in one facility are separately insured from those of another of its facilities.

§91.206. Underserved Area Credit Unions – Secondary Capital Accounts.

A credit union that has been approved for a designation as a Underserved Area Credit Union pursuant to Section 122.014, Finance Code may issue secondary capital accounts to members or nonmembers of the credit union on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall file an application for approval with the commissioner. The application shall be supported by a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts, along with such other information and data as the commissioner may require.

(2) The secondary capital account must be established as an uninsured secondary capital account or other form of non-share account, and shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(3) The secondary capital account must mature no earlier than five years.

(4) The secondary capital account shall not be redeemable prior to maturity.

(5) The secondary capital account holder's claim against the credit union must be subordinated to all other claims, including those of shareholders, creditors and the credit union's insuring organization.

(6) Funds deposited into the secondary capital account, including interest accrued and paid into the capital account, must be available to cover the credit union's realized operating losses that exceed its net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall not restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the secondary capital account holder or into a separate account from which the secondary capital account holder may make withdrawals. Losses realized shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(7) The secondary capital account may not be pledged or provided by the account holder as security on a loan or other obligation with the credit union or any other party.

(8) In the event of merger or other voluntary dissolution of the credit union, other than merger into another Underserved Area designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account holder.

(9) A secondary capital account contract agreement must be executed by an authorized representative of the account holder and the credit union. The agreement must set forth all of the terms and conditions of this section and contains a disclosure and acknowledgement by the account holder that the secondary capital account is not redeemable, will not be insured, may be used to cover operating losses of the credit union and not be replaced or replenished, and is subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the credit union's insuring organization. All such contract agreements must be retained by the credit union for the term of the agreement.

(10) In the event the credit union is classified as "critically under capitalized", "marginally capitalized", "minimally capitalized", "moderately capitalized" or "uncapitalized", or the credit union has failed to undertake any mandatory supervisory action, the commissioner or any entity insuring the accounts of the credit union, may prohibit payment of principal, dividends or interest on the credit union's secondary capital accounts in accordance with powers and procedures granted under state or federal laws, as applicable. Any such unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

(11) Credit unions with secondary capital accounts shall record the funds on its balance sheet in an equity account entitled "uninsured secondary capital accounts". The capital value of the accounts shall be kept in accordance with generally accepted accounting principles.

§91.208. Notice of Known or Suspected Criminal Violations.

(a) Each credit union shall exercise reasonable due diligence to discover, investigate, and report theft, embezzlement, and other types of criminal activity affecting the credit union. The credit union shall provide written notice to the Department within 30 calendar days for any of the following known or suspected criminal violations:

- (1) Insider abuse involving any amount,
- (2) Other transactions, including potential money laundering or violations of the Bank Secrecy Act, aggregating \$5,000 or more,
- (3) Losses resulting from robbery or burglary.

(b) When applicable, a credit union may meet the reporting requirements of this section by providing the Department a copy of a Suspicious Activity Report prepared in accordance with the NCUA Rules and Regulations 12 C.F.R. §748.1(c). The timeframe for reporting the activity to the Department in this manner may be extended up to 60 days when authorized by the regulation.

§91.209. Call Reports and Other Information Requests.

(a) Each credit union shall prepare and submit, in a manner prescribed by the commissioner, a quarterly financial and statistical report. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty of \$50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and

charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to cause the NCUA to reduce or negate its own penalty assessment against the credit union under Section 202 of the Federal Credit Union Act (12 U.S.C. §1782) for late or false/misleading filing of a quarterly call report (Form 5300). The Department shall abate the penalty, in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, assessed by the Department, however, shall not be decreased below the amount authorized to be assessed under subsection (a) of this section.

§91.210. Foreign Credit Unions.

(a) Definitions. (1) Foreign credit union -- a credit union that is not chartered or otherwise organized under the laws of this state or the United States. (2) Local service area -- an area that is within reasonable proximity of a foreign credit union's office, allowing members to be realistically served from that office.

(b) Application. Prior to commencing business in this state, a foreign credit union is required to file a written application supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of authority pursuant to Finance Code §122.013.

(c) Approval. The application shall not be approved unless the commissioner finds that the applicant:

(1) is acting in good faith and the application does not contain a material misrepresentation;

(2) is financially sound and has no supervisory problems;

(3) will conduct its operations in the State of Texas in accordance with the intent and purpose of the Act and Commission rules;

(4) has provided evidence of compliance with the Finance Code, §201.102 concerning registering with the secretary of state to do business in Texas;

(5) has share and deposit insurance equivalent to that required for credit unions organized under the Act;

(6) has paid a permit fee of \$500 for each and every branch office proposed to be established in the State of Texas;

(7) has fidelity bond coverage satisfactory to the commissioner; and

(8) has provided all other information the commissioner may require.

- (d) Compliance with Texas law. A credit union chartered by another state shall comply with all applicable Texas laws, including those laws regarding home equity lending, loan interest rates, and consumer protection, to the same extent that those laws apply to a Texas credit union.
- (e) Federal treaties. If a treaty or agreement exists between the United States and a foreign country which requires the commissioner to permit a foreign credit union to operate a branch in this state and the commissioner determines that the applicant has substantially the same characteristics as a credit union organized under the Act, then the applicant must comply with all provisions of the Act and commission rules, unless otherwise permitted by this section.
- (f) Financial statements. Each foreign credit union that is operating a branch office within the State of Texas shall furnish to the commissioner a copy of its annual audited financial statements, if any, or other statements of financial conditions as the commissioner may require.
- (g) Examinations. The commissioner is authorized to examine the books and records of any branch office operated in the State of Texas by a foreign credit union. The costs of examination, as prescribed in §97.113(d) of this title (relating to Supplemental Examinations), must be fully borne by the foreign credit union. The supplemental examination fee may be waived or reduced at the discretion of the commissioner.
- (h) Agreements with other regulators. The commissioner shall enter into supervisory agreements with the foreign credit union regulators and, as necessary, the foreign credit unions, as authorized by Finance Code §15.411, to resolve any conflict of laws and to specify the manner in which the examination, supervision, and application processes will be coordinated with the regulators. The agreement may also prescribe the applicable laws governing the powers and authorities of the foreign branch and may address, but are not limited to, corporate governance and operational matters. The agreement, however, shall not limit the jurisdiction or authority of the commissioner to examine, supervise and regulate a foreign credit union that is operating or seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.
- (i) Field of membership. A certificate of authority to do business in this state is specifically issued to allow a foreign credit union to provide services to its existing field of membership. However, the commissioner may approve a foreign credit union's request to expand its field of membership to include groups with a community of interest that are within the foreign credit union's local service area if it is organized in a state or country that allows a credit union organized under the act to expand its field of membership to at least the same extent. After being satisfied that the group is within the foreign credit union local service area, the commissioner shall use the same criteria and the same procedures as used when a Texas credit union seeks to expand its field of membership. The commissioner shall make a reasonable effort to coordinate this determination with the foreign credit union's primary regulator to assure that each agency's material interests, authorities and responsibilities are fulfilled.
- (j) Location of Group. For the purposes of a field of membership expansion, the group as a whole will be considered to be within the local service area when:
- (1) A majority of the persons in the group live, work, or gather regularly within the local service area;
 - (2) The group's headquarters is located within the local service area; or
 - (3) The group's "paid from" or "supervised from" location is within the local service area.
- (k) Prohibition against share/deposit production offices. A foreign credit union may not use its certificate of authority primarily for the purpose of deposit production. The foreign credit union is expected to reasonably help meet the credit needs of the groups in Texas that are served by the credit union. If the Commissioner determines that the foreign credit union's level of lending in Texas relative to the deposits from Texas members is less than half the average of total loans
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relative to total deposits for all credit unions domiciled in Texas, the credit union will not be permitted to further expand its field of membership nor open additional offices in Texas.

(l) Enforcement; penalty. The commissioner has grounds to issue a cease and desist order to an officer, employee, director, and/or the foreign credit union itself, if the commissioner determines from examination or other credible evidence that the credit union has violated or is violating any applicable Texas law or rules of the commission. If the foreign credit union does not comply with an order, the commissioner may assess an administrative penalty as authorized by §122.260, Finance Code, as well as suspend or revoke the certificate of authority.

Subchapter J. Changes in Corporate Status

§91.1003. Mergers/Consolidations.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acquirer credit union - The credit union that will continue in operation after the merger/consolidation.

(2) Acquiree credit union - The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) Merger inducement – A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.

(4) Substantial – An amount that is large in size, value, or importance. For purposes of this section, an amount is substantial if it exceeds \$1,000.00 in total.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

(c) Notice of Intent to Merge/Consolidate. The credit unions shall notify the commissioner in writing of their intent to merge/consolidate within ten days after the credit unions' boards of directors formally agree in principle to merge/consolidate.

(d) Plan for Merger/Consolidation. Upon approval of a proposition for merger/consolidation by the boards of directors, the credit unions must prepare a plan for the proposed merger/consolidation. The plan shall include:

(1) The terms and conditions of the merger/consolidation including a detailed description of any substantial remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other substantial financial rewards or benefits that any board member or senior management employee of the acquiree credit union may receive in connection with the merger/consolidation;

(2) the current financial reports of each credit union;

(3) the combined financial reports of the two or more credit unions;

(4) an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

(5) an explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;

(6) a summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;

(7) a summary of the advantages and disadvantages of the merger/consolidation;

(8) the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(9) any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(e) Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the corporate resolution of each board of directors approving the

merger/consolidation plan;

- (C) the proposed Notice of Special Meeting of the members;
- (D) a copy of the ballot form to be sent to the members;
- (E) the current delinquent loan summaries for each credit union;
- (F) a statement as to whether the transaction is subject to the Hart-Scott Rodino

Act premerger notification filing requirements; and

(G) a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the acquirer credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner. Notice of the proposed merger must be published in the *Texas Register* and Department Newsletter as prescribed in §91.104 (relating to Notice of Applications).

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval.

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the acquirer credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the acquirer credit union after merger/consolidation are proposed to be substantially the same as those of the acquiree and acquirer credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(2) Members shall be given advance notice of the meeting in accordance with the credit

union's bylaws. The notice of the meeting shall:

- (A) specify the purpose of the meeting and state the date, time, and place of the special meeting;
- (B) state the reasons for the proposed merger/consolidation;
- (C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner;
- (D) provide the name and location of the acquirer credit union;
- (E) specify the methods permitted for casting votes; and
- (F) if applicable, be accompanied by a mail ballot.

(h) **Completion of Merger/Consolidation.**

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree credit union will be canceled.

§91.1005. Conversion to a Texas Credit Union.

(a) **Authority to convert.** A federal credit union or an out of state credit union is authorized to convert to a credit union incorporated under the laws of this state by Section 122.203 of the Act.

(b) **Requirements for conversion.** A credit union wishing to convert to a credit union incorporated under the laws of this state shall comply with the following requirements:

(1) Submit a complete application on a form and in a manner prescribed by the commissioner;

(2) Furnish evidence that the current federal or state regulatory agency having jurisdiction over the applicant has no preliminary objection to the conversion plan;

(3) Submit to a conversion examination by the department and pay the supplemental examination fee prescribed in Section 97.113 of this Title (relating to Fees and Charges). The commissioner may waive the examination or the fee, upon finding good cause;

(4) Furnish evidence confirming that the applicant has complied with all applicable requirements of and has completed the conversion in a manner satisfactory to the insuring organization and the current federal or state regulatory agency; and

(5) Furnish evidence that the applicant has established or will relocate its principal place of business in a specific location in the State of Texas.

(c) **Approval.** The commissioner shall approve the conversion once the conditions required by this section have been met and the commissioner finds that the applicant: (1) is financially sound; (2) has no material supervisory problems; and (3) can reasonably be expected to conduct its operations in a safe and sound manner and in accordance with the laws of this state. The commissioner may approve the conversion conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been met.

(d) **Effective date.** The conversion shall become effective immediately upon the issuance of the certificate of incorporation or on a stipulated date within 90 days of the conversion approval. On

request and for good cause shown, the commissioner may grant a reasonable extension of the effective date.

§91.1006. Conversions to a Federal or Out-of-State Credit Union.

- (a) Authority to Convert. A credit union organized under the laws of this state is authorized to convert to a federal credit union or an out-of-state credit union by Sections 122.201 and 122.202 of the Act.
- (b) Requirements for Conversion. A credit union wishing to convert to a federal credit union or an out-of-state credit union shall comply with the following requirements:
 - (1) Furnish evidence to the department that a conversion proposal has been approved by a two-thirds vote of the board of directors;
 - (2) Submit copies of all filings made with any state or federal regulatory agency and insuring organization with jurisdiction over any aspect of the conversion process;
 - (3) Furnish evidence confirming that the insuring organization and the acquiring state or federal regulatory agency have no preliminary objections to the plan;
 - (4) Submit a vote certification as required by Section 91.1008(c) of this chapter showing that the conversion proposal was approved by an affirmative vote of a majority of the eligible members of the credit union voting; and
 - (5) Furnish written evidence confirming that the credit union has met all of the conversion requirements of the insuring organization and the acquiring state or federal regulatory agency.
- (c) Approval. The commissioner shall approve the conversion if all of the conditions required by this section have been met, unless the commissioner determines the conversion is being made to circumvent a pending supervisory action that is about to be or has been initiated by the commissioner because of a concern over the safety and soundness of the credit union.
- (d) Effective Date. Once the commissioner has approved the conversion, it shall become effective upon the issuance of a charter or certificate of incorporation from the acquiring state or federal regulatory agency.

§91.1007. Conversion to a Mutual Savings Institution.

- (a) Authority to convert. A credit union organized under the laws of this state is authorized to convert to a mutual savings bank or association by Section 123.003 of the Act.
 - (b) Requirements for conversion. A credit union that is considering converting to a mutual savings bank or association must comply with the following requirements:
 - (1) Preliminary communication with membership and department. At least thirty days prior to a final vote by the board of directors to formally adopt a conversion proposal, the credit union shall send notice to the department and each member advising that the board is considering a possible conversion to a mutual savings bank or association. The notice shall, at a minimum, contain the following information: (a) a prominent legend in bold-face type that advises members of a potential conversion; (b) the electronic availability of information related to a potential conversion; (c) a telephone number and e-mail address that members may use to request copies of the potential conversion information that is available by electronic means; (d) the ability of members to submit written comments on the potential conversion; and (e) a clear, concise, and impartial description of the potential conversion to be considered by the board.
 - (2) Information posted on Internet web site. The credit union shall post information related to a potential conversion on the credit union's principal Internet web site at least thirty days
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prior to a vote by the board of directors to adopt a proposal of conversion. The posted information shall, at a minimum, discuss:

- (A) The business purposes that might be accomplished by a conversion;
- (B) The differences between and similarities of a credit union and a mutual savings institution;
- (C) An estimate of the anticipated conversion expenses;
- (D) The methods by which a member may request a copy of the posted information;
- (E) The method and timeline for members to submit written comments on the potential conversion; and
- (F) The process that will be followed if the board formally adopts a conversion proposal.

(3) Written comments from members. The board shall provide members a reasonable opportunity to submit written comments relating to a potential conversion. The board may hold a special meeting to receive member input regarding the potential conversion. It is within the board's discretion to determine the type, number, duration, and location of any special meeting(s). Before taking a final vote on a conversion proposal, the board should consider all written comments and any other member input received at any special meeting.

(4) Adoption of a conversion proposal by the board. Subsequent to the written comment period, the credit union may adopt, by the affirmative vote of at least two-thirds of the members of its board of directors, a conversion proposal consistent with this section. The credit union shall notify the department of the board's approval of the proposal within 5 days of the approval. In addition, the following documents must be sent to the department as soon as reasonably practical:

- (A) Copies of any filings made with any state or federal regulatory agency and insuring organization with jurisdiction over any aspect of the conversion process;
- (B) A copy of the disclosure materials and the ballot to be sent to eligible members relative to voting on the conversion proposal;
- (C) An estimated budget of the anticipated conversion expenses including legal, postage and mailing, advertising, printing, consulting fees, examination and operating fees, and any overtime or other employee compensation to be paid exclusively as a result of the conversion; and
- (D) Any other information reasonably requested by the commissioner.

(5) Membership approval. The members of the credit union must approve the conversion proposal by an affirmative vote of a majority of those eligible members who vote on such proposal, unless the bylaws require a higher vote threshold. The credit union shall submit a vote certification as required by section 91.1008(c) of this chapter showing that the conversion proposal was approved by the members of the credit union;

(6) Insuring organization requirements. The credit union must furnish written evidence of its compliance with any voting procedures and disclosure requirements imposed by its insuring organization; and

(7) Other regulatory oversight. The credit union must furnish written evidence that it has met all conversion requirements of the acquiring state or federal regulatory agency.

(c) Notice, disclosure materials, and ballot mailed to members. The credit union shall mail to each eligible member, as defined in Section 91.1008 of this Chapter, a notice advising the member of the adoption and filing of the conversion proposal. The notice must include a prominent statement that the conversion will be decided by a majority of eligible members who vote on the issue (unless the bylaws require a higher vote threshold), and that each eligible member is only entitled to vote

once. Also, incorporated with the mailing of the notice, eligible members shall be provided with plain language disclosures of material facts and information to be used as a basis for reaching an informed decision to vote on the conversion. The disclosures and ballot shall be submitted to the commissioner for approval. The commissioner may require changes in the disclosures and ballot provided to eligible members to assure full and adequate disclosure prior to the documents being mailed to eligible members.

(d) Conflict of interest. A director, officer, committee member, agent, or senior management employee of the credit union, and immediate family members of such individuals shall not, directly or indirectly, receive a fee, commission, or other consideration, other than that person's usual salary or compensation, for aiding, promoting, or assisting in a conversion under this section.

(e) Continuity of existence. The corporate existence of a credit union converting under this rule shall continue in its successor. Each member shall be entitled to receive a share or deposit account or accounts in the converted institution equal in amount to the value of accounts held in the former credit union subject to any lien or right of offset held by the credit union.

(f) Approval. The commissioner shall approve the conversion if all of the conditions required by this section have been met, unless the commissioner determines the conversion is being made to circumvent a pending supervisory action that is about to be or has been initiated by the commissioner because of a concern over the safety and soundness of the credit union.

(g) Effective date. Once the commissioner has approved the conversion, it shall become effective upon the issuance of a charter or certificate of incorporation from the acquiring state or federal regulatory agency.

§91.1008. Conversion Voting Procedures and Restrictions; Filing Requirements.

(a) Voting procedures. Eligible members may vote on a plan of conversion by written ballot either filed in person at a special meeting held on the date set for the vote or mailed by the member. The vote on a conversion proposal must be by secret ballot. Mail balloting must be conducted in accordance with §91.302 of this Chapter.

(b) Definitions.

(1) "Eligible Member" means a member of a credit union who is approved and fully qualified for membership in accordance with the credit union's bylaws and written policies as of the eligibility record date.

(2) "Eligibility Record Date" means the cut off date for determining eligible members, which shall be deemed to be the last day of the month immediately preceding the date the credit union's board of directors notifies members or the public that it is contemplating a conversion.

(c) Voting ballots. All ballots must include the following:

(1) The name of the credit union and the name of the proposed institution if the conversion is approved. This information may be incorporated into the body of the voting options;

(2) The date and time by which the ballot must be received if mailed; and

(3) The following statements, printed in a manner acceptable to the commissioner:

(A) The conversion will be decided by a majority of credit union members who vote on the issue (unless the bylaws require a higher vote threshold);

(B) Once a vote has been cast, it may not be changed; and

(C) A "yes" vote means the credit union will become a (insert conversion entity type) and a "no" vote means the credit union will remain a (insert state or federal) credit union.

(D) Vote certification. Within ten business days following a vote on a plan of conversion, the credit union shall file with the department a certified copy of a resolution of the board of directors stating that voting on the conversion has been completed in accordance with this section and setting out the following information:

- (1) The total number of members eligible to vote;
- (2) The number of eligible members who voted (either at the special meeting or by mail); and
- (3) The total number of votes cast in favor and against the plan of conversion.

§91.1010. Voluntary Liquidation.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Voluntary liquidation means the dissolution of a credit union with the assets being sold or collected, liabilities paid, and shares/deposits distributed under the direction of the board of directors.

(2) Liquidation date means the date the membership votes to approve liquidation.

(3) Liquidating agent means the person or persons appointed by the board of directors to take possession of, manage, and liquidate the credit union.

(b) Initiating voluntary liquidation process.

(1) Unless the commissioner has issued a liquidation order, the board of directors may, by resolution, recommend the voluntary dissolution of the credit union and direct submission of the question to the members of the credit union.

(2) Within five days after the date the board adopts the resolution, the chairman of the board shall notify the commissioner, in writing, of the reasons for the proposed liquidation including a balance sheet and income statement as of the previous month-end.

(3) The board shall act promptly to obtain the membership's approval in accordance with subsection (f) of this section.

(4) The board's recommendation to dissolve and liquidate the credit union must be approved by the affirmative vote of a majority of members who submit ballots in person at the special membership meeting and by mail. If less than a majority vote to approve, the credit union may, subject to the commissioner's approval, resume normal business, resubmit the question of liquidation to the membership or request the appointment of a conservator under the Act and the rules adopted under it.

(5) After an affirmative vote by the members to dissolve and liquidate the credit union, the board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for fair and equitable distribution of the assets to the members.

(6) Within 5 days after an affirmative vote to dissolve and liquidate the credit union the chairman shall notify the commissioner in writing of the intention to liquidate together with a list of the officers and directors.

(c) Notice of liquidation.

(1) If the vote to dissolve and liquidate the credit union is affirmative, the credit union shall:

(A) File a notice with the Department within five days after the liquidation date; and

(B) Mail a copy of the notice of liquidation to shareholders/depositors, other known creditors, and known claimants of the credit union within ten days after the liquidation date.

(2) A credit union shall publish public notice of liquidation, if so directed, and in the manner directed, by the Department.

(3) Creditors shall be provided at least 30 days after the liquidation date to submit their claims.

(d) Transaction of business during liquidation.

(1) Immediately after notice of the special meeting to consider voluntary liquidation is mailed to the membership, admission of new members shall be suspended. No new extensions of credit shall be funded during the period between the board of directors' adoption of the resolution recommending voluntary liquidation and the membership meeting called to consider voluntary liquidation, except for the issuance of loans fully secured by a pledge of shares and the funding of outstanding loan commitments approved before adoption of the board resolution. Collection of loans and interest, payments of necessary expenses, clearing of share drafts and credit card charges shall continue.

(2) If the membership votes to dissolve and liquidate the credit union, the credit union shall immediately discontinue payments on shares/deposits, withdrawal of shares/deposits (except for transfer of shares/deposits to loans and interest), transfer of shares/deposits to another share/deposit account, in the same credit union, granting of loans, and making of investments other than short-term investments shall be discontinued. The credit union shall continue to collect on loans with interest and shall continue to pay necessary expenses during the period of liquidation. The credit union shall direct its Members to discontinue the use of share drafts and credit cards, and shall inform Members that on and after the 15th calendar day after the liquidation date, items will no longer be cleared.

(3) Approval of the Department must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders/depositors dollar-for-dollar, principal plus any interest accrued or due to the shareholder/depositor, through the liquidation date.

(e) Liquidation Plan. The board of directors shall develop and approve a written plan for the liquidation of the assets and payment of shares/deposits. The liquidation plan shall provide for the liquidation of the credit union within one year of the liquidation date. At a minimum, a credit union's liquidation plan shall address the following areas:

(1) Qualifications and experience of the proposed liquidating agent and the compensation and expenses attributable to the service of such person or persons;

(2) Income and expense items must be projected to determine that sufficient funds will be available to finance the liquidation of the credit union;

(3) Schedule for payment of all debts and liabilities owed by the credit union;

(4) Partial distributions of shares/deposits should be considered as funds become available from the liquidation of assets;

(5) Distribution of the credit union's assets that remain after settlement of debts and liabilities to all persons entitled to them;

(6) Disposition or maintenance of any remaining or unclaimed funds, real or personal property, or other assets;

(7) Surety bond coverage of all persons who will handle or have access to funds of the credit union and the proposed discovery period after final distribution of assets; and

(8) Retention of the credit union's records after liquidation, and in a manner that complies with subsection (j) of this section.

(f) Approval of the liquidation proposal by membership.

(1) Not later than the 10th calendar day before the date of the special membership meeting to consider approval of the liquidation, the credit union shall notify, by first class mail, the Commissioner and each member who is eligible to vote on the proposal. The notice must adequately describe the purpose and subject matter of the vote and clearly inform members that they may vote at a special meeting held on the date set for the vote or by mailing in the ballot. The notice must include a clear and conspicuous disclosure of how the voluntary liquidation may affect the availability of funds on deposit and state the date, time, and place of the meeting. A ballot must be included in the same envelope as the notice.

(2) No director or senior management employee may receive any economic benefit in connection with the voluntary liquidation of the credit union other than compensation and other benefits paid to directors and senior management employees in the ordinary course of business.

(3) A credit union considering the question of liquidation must conduct its membership vote in a fair and legal manner. No inducements may be offered to encourage members to participate in the vote.

(4) A credit union should be careful to conduct its special membership meeting in a manner conducive to accommodating all members wishing to attend, including selecting a meeting location that can accommodate the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules.

(g) Distribution of assets.

(1) The liquidating agent shall use the credit union's assets to pay, in the following order:

(A) Secured creditors to the extent of the value of their collateral;

(B) Liquidation expenses, including a surety bond;

(C) Depositors;

(D) General creditors, including secured creditors to the extent that their claims exceed the value of their collateral; and

(E) Distributions to members in proportion to the shares/deposits held by each member.

(2) After all assets of the credit union have been converted to cash or found to be worthless, and all loans and debts owing to it have been collected or found to be uncollectible, and all obligations of the credit union have been paid/settled, except for shares/deposits due its members, the credit union shall close its books and compute the pro rata distribution to its members. The computation shall be based on the total amount in each share/deposit account as of the liquidation date or the date on which all share drafts have cleared, whichever is later.

(3) Payments must be made to members promptly after the pro rata distribution has been computed. The credit union may mail a check to the member's last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means authorized by the member.

(4) Unclaimed share/deposit accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be escheated in accordance with Texas laws.

(5) The Department shall be notified in writing within five days after the final distribution of assets to the members begins.

(h) Economic benefit. No director or senior management employee may receive any economic benefit in connection with the voluntary liquidation of the credit union other than compensation and other benefits paid to directors and senior management employees in the ordinary course of business.

(i) Continued supervision of voluntary liquidation.

(1) A voluntary liquidation of a credit union shall be conducted only with the continued supervision of the Department. The commissioner may conduct any examinations of the credit union the commissioner considers necessary or appropriate.

(2) The credit union shall submit a report to the Department within 10 business days after the start of liquidation showing the credit union's balance sheet as of the start of liquidation. The liquidating credit union shall submit a report of progress as requested by the Department.

(3) If the commissioner has reason to conclude the voluntary liquidation of a credit union is not being safely or expeditiously conducted, or is being conducted in violation of this section, the commissioner may take possession of the business and property of the credit union in the same manner, with the same effect, and subject to the same rights accorded the credit union as if the commissioner had issued a liquidation order. The commissioner may appoint a new liquidating agent and proceed to liquidate the affairs of the credit union as provided in the Finance Code, Title 3, Subtitle D, Subchapter E.

(j) Retention of records.

(1) The board of directors shall appoint a custodian for the credit union's records that are to be retained after the final distribution of assets.

(2) The custodian shall retain all records of the liquidating credit union that are necessary to establish that the credit union paid creditors, and distributed assets to the members fairly and equitably in accordance with the approved liquidation plan. The custodian shall retain the records for a period of five years following the date the Department cancels the credit union's charter.

(k) Certificate of dissolution and liquidation. Within 120 days after the credit union begins final distribution of assets to members, it shall file with the Department a duly executed Certificate of Dissolution and Liquidation.

(l) Inquiries after liquidation. It will be the responsibility of the custodian for the credit union's records to respond timely to inquiries after liquidation.

Subchapter L. Submission of Comments by Interested Parties

§91.3001. Opportunity To Submit Comments On Certain Applications.

- (a) An interested party may submit comments to the commissioner on the following matters:
 - (1) an application for incorporation under the Texas Finance Code, Section 122.001;
 - (2) an amendment to a credit union's articles of incorporation under the Texas Finance Code, Section 122.011, which includes an amendment to expand the credit union's field of membership; or
 - (3) an application to merge or consolidate under the Texas Finance Code, Section 122.152.
- (b) An interested party is a person or entity that has an interest in particular to the application other than as a member of the general public.
- (c) Acceptance of comments under this section does not constitute a determination of standing to protest or otherwise participate in a contested case hearing on the application.
- (d) Comments may be made in writing or provided in a meeting with the commissioner or deputy commissioner, as follows:
 - (1) written comments shall be submitted within 30 days after notice of the application is published in the Texas Register or the department's newsletter, whichever is later;
 - (2) a meeting to receive comments shall be held upon written request by an interested party or upon the commissioner's direction.

§91.3002. Conduct Of Meetings To Receive Comments.

- (a) Meetings to receive comments under 91.3001 of this title (relating to opportunities to submit comments on certain applications) will be conducted in the following manner:
 - (1) a written request for a meeting to receive comments must be received by the department within 30 days after publication of the notice of the application and shall contain the following:
 - (A) the identity of the requestor, including the name of a natural person who represents a business entity or other association, mailing address, daytime telephone number, and a facsimile number if any;
 - (B) the name of the application and type of application;
 - (C) a description of the requestor's interest in the application; and
 - (D) a list of at least three dates and times within 30 days after the date of publication of notice of application, which are available for the meeting.
 - (2) the meeting will be scheduled and may be rescheduled, if necessary, by the commissioner to occur after at least three business days' notice by telephone, facsimile, or mail;
 - (3) one meeting may be scheduled to receive comments from more than one interested party, at the discretion of the commissioner;
 - (4) a limit on the length and other conditions for the conduct of the meeting may be imposed by the commissioner, and the conditions will be stated in the notice of the meeting;
 - (5) the meeting may be conducted by telephone with the consent of the interested party; and
 - (6) the department is not required to make a record of the meeting.
 - (b) An interested party who fails to attend a meeting scheduled for the party's benefit may submit written comments within three days after the date scheduled for the meeting, but the commissioner is not required to schedule another meeting.
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(c) The purpose of the meeting is only to receive comments, and no decision, preliminary or otherwise, will be made at the meeting.

PROPOSED AMENDMENTS

ACCURACY OF ADVERTISING

- C. (4) Recommendation for Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.125 (General Rules) Concerning Accuracy of Advertising.

BACKGROUND: Amendments are proposed to the rule to clarify the rule applies to announcements or press releases. The original rule was adopted in November of 2005, by request of the state legislature. The additional languages modernizes the rule to clarify that dissemination of information under means such as social media announcements and press releases is covered under this rule. Because of the velocity of these types of communications, the time to respond when a notice the advertising is deemed misleading is proposed to be reduced from ten to five business days and it provides for the option of notifying that the communication at issue has been removed as an adequate response.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission to approve the proposed rule changes 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 91.125 concerning **Accuracy of Advertising**.

The Credit Union Commission proposes amendments to §91.125, concerning accuracy of advertising. The proposed amendments clarify that advertising includes any announcements or press releases. They provide for five business days to respond or remove the advertisement and continue to allow the Commissioner to prohibit the use of advertising, postings or press releases that are false, deceptive or misleading.

The new rule responds to increased use of online announcements or social media postings as well as self-issued press releases to promote a credit union or its products. It assures these types of communications are held to the same standards for accuracy as a traditional advertisement and the public can be protected from deceptive or misleading advertising.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. Karen Miller, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Ms. Miller has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. She further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Ms. Miller has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement.

Unless indicated below, for each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to Karen Miller, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@tud.texas.gov. To be considered, a written comment 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.

STATUTORY AUTHORITY. The amendments are proposed pursuant to 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. Authority to adopt these amendments is found also in Texas Finance Code Sections 122.1531 and 122.156.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically Finance Code, Sections 122.005, 122.151 - 122.156, and 124.003.

§91.125. Accuracy of Advertising.

(a) As used in this rule, an advertisement is any informational communication, including oral, written, electronic, broadcast or any other type of communication, made to members, prospective members, or to the public at large in any manner designed to attract attention to the business of a credit union.

(b) No credit union shall disseminate or cause the dissemination of any advertisement, **announcement, or press release** that is in any way intentionally or negligently false, deceptive, or misleading. An advertisement shall be deemed by the Commissioner to be intentionally or negligently false, deceptive, or misleading if it:

- (1) contains materially false claims or misrepresentations of material facts;
- (2) contains materially implied false claims or implied misrepresentations of material fact;
- (3) omits material facts;
- (4) makes a representation likely to create an unjustified expectation about credit union products or services;

(5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;

(6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and

(7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement, **announcement, or press release** is deemed to be false, deceptive or misleading, the credit union will have **[ten] five (5) business** days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement **or notify the department of removal of the advertisement, announcement or press release.** If the **[credit union does not provide this information or the]** Commissioner, after receipt of the information, still deems the advertisement, **announcement, or press release** to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

MERGERS/CONSOLIDATIONS

C. (5) Recommendation for Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter J, Section 91.1003 (Mergers/Consolidations)

BACKGROUND: Amendment are proposed to provide more detail and clarity to the guidance when two credit unions decide to merge and enable the department to assure that members of the credit unions that are merging have sufficient and transparent information when casting their member vote..

Credit Unions are undergoing significant consolidation in numbers, 163 credit unions with \$14 billion in federally insured assets were merged into other credit unions in the 2024 calendar year. The average assets of the surviving or continuing credit unions is \$1.2 billion, and the average size of the merging or failed credit unions was \$90 million. Of those, only 24 were merged due to financial or management reasons and 138 or 85% were voluntary, with 119 indicating the reason was simply “expanded services”. There has been a recent trend to offer financial incentives to credit union officials as part of the merger. This has resulted with NCUA rules that require publication to the public of the member notice on their website and requirements for disclosure of financial arrangements from a merger in the member ballot.

A recent merger of a credit union with just under \$150 million in assets, had approximately \$6 million in executive upon merger completion. A copy of the public notice in this merger is included in the committee’s packet. We also include the public comments to this merger.

Credit Unions are member owned, and the capital of the institution does not belong to the officials or executives but to its members. Members should presume that both the regulator and their board is protecting their investment. At a minimum, credit union members deserve to be fully informed when they vote to dissolve their credit union.

The notice to members must be reviewed and approved by the Department and NCUA. It must contain a summary of the plan for merger. In order for the department to assure the member notice provides transparency, revisions to the rules are necessary to provide the department with enough information to review the plan, financial effects of a merger and assure that there is appropriate disclosure to the members. More detail in the rule will also facilitate submission of complete applications which do not need to be returned for additional information. Complete disclosure of information is important, particularly as to detailing all merger related

financial arrangements, and providing the reasons for a merging with a specific surviving or continuing credit union.

The proposed amendment defines merger related financial arrangement to assure payments to officials or executives cannot be concealed through the use of third parties. The amendments will assure all merger related payments are disclosed to the regulator, insurer and credit union members.

Revisions to the rule make clear the merger plan:

1. must disclose all payments or financial awards payable to any parties as a result of the merger and include honorariums or any rewards from related entities or third parties from the merger;
2. must detail significant expenditures, such as contractual termination expense, expected as a result of the merger which will impact capital;
3. documents the merging Credit Union's Board's efforts to fulfill their statutory and fiduciary duties when deciding to merge and selecting their merger partner; and
4. contains detailed support for the calculation methodology for any financial rewards provided to any party; and

Other amendments to the rule:

1. Change the definition of a substantial amount from \$1,000 to \$10,000.
2. Clarify:
 - a. that an objectively calculated dividend, interest rebate or other similar payment to the credit union members is not a prohibited merger inducement;
 - b. the prohibition on member inducements only relates to members of one credit union being solicited to merge by a different entity (not their own board);
 - c. an increase in benefits or salary to at-will employees equal to those offered to a surviving credit union's existing employees is not a merger related financial arrangement;
 - d. the Commissioner has the power to request additional information to review the application;
 - e. the financial condition of the credit union anticipated after the merger, considering financial rewards and significant contract expenditures, will be considered in the final approval, and
 - f. that misleading advertisements related to the merger will be subject to accuracy of advertising rules and possible cease-and-desist order as well as may be a basis for denial of the application after notice under this rule.

3. Require financial awards conditioned on the merger (defined as merger related financial arrangements) to be detailed on a separate additional page to be included with the members' ballot and meeting notice, this assures the disclosure is not obscured by other information, much of it promotional for the merger, when the member is making their vote.

RECOMMENDED ACTION: The Department requests that the Committee recommend to the Commission to approve for publication and comment on the Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter J, Section 91.1003 concerning **Mergers/Consolidation**.

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 J, Section 91.1003 concerning **Mergers/Consolidation**.

The Credit Union Commission (the Commission) proposes amendments to 7 TAC §91.1003, relating to Mergers and Consolidations. The proposed amendments add a definition of merger related financial arrangements and detail disclosures and board due diligence documentation that must be included in any plan of merger.

The Commission proposes the following amendment to §91.1003. The language is presented to assure boards of directors that decide to merge document their due diligence on behalf of their members and merger plans provide full transparency with regards to any entities that will receive financial benefits because of the merger and the plan contemplates all costs associated with the merger.

Credit Unions are member owned, and the capital of the institution does not belong to its officials or executives but to its members. Members should be able to rely on both the regulator and their board to protect their investment. At a minimum, credit union members deserve to be fully and truthfully informed when they vote to dissolve their credit union and transfer their accounts and capital to another financial institution. Therefore, the rule not only provides for additional transparency with the regulator and members but also provides that if there is deceptive advertising about the merger, it may be the basis for a denial of the merger application.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS. Karen Miller, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments under Government Code §2001.024(a)(4), as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Ms. Miller has determined, under Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit of rule clarity will provide improved guidance to the industry. He further has determined there will be no probable economic cost to the credit union system or to persons required to comply with the rule.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY. There is no reasonably forecasted effect on local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST-IN/COST-OUT). This rule proposal is not subject to Texas Government Code §2001.0045, concerning increasing costs to regulated persons, because this agency is a Self-Directed Semi-Independent (SDSI) agency under Finance Code Chapter 16 and is exempt from that cost provision.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kolhoff has also determined that for each year of the first five years the proposed amendment is in effect, there will be no reasonably forecasted adverse economic effect on small businesses, micro-

businesses, or rural communities as a result of implementing these amendments, and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002 is required.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Government Code §2001.0221, the Board has prepared a government growth impact statement. Unless indicated below, for each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- lead to an increase or decrease in the fees paid to the department;
- create new regulations;
- expand, limit or repeal existing regulations;
- increase or decrease the number of individuals subject to the rule's applicability;
- positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the rule does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS. The proposed rule is not a "major environmental rule" as defined by Government Code, §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted in writing to Karen Miller, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@tud.texas.gov. To be considered, a written comment 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.

STATUTORY AUTHORITY. The amendments are proposed pursuant to 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. Authority to adopt these amendments is found also in Texas Finance Code Sections 122.1531 and 122.156.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D specifically Finance Code, Sections 122.005, 122.151 - 122.156, and 124.003.

Subchapter J. Changes in Corporate Status

§91.1003. Mergers/Consolidations.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acquirer credit union - The credit union that will continue in operation after the merger/consolidation.

(2) Acquiree credit union - The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) Merger inducement – A promise by a credit union to pay to the members of another credit union a sum of money or other **[material] substantial** benefit upon the successful completion of a merger of the two credit unions. **This does not include a member dividend or interest rebate calculated under objective criteria and approved by the credit unions board of directors.**

(4) Merger-related financial arrangement -- a substantial financial benefit received or to be received by any individual or entity, including any board or committee member or senior employee of Acquiree, conditioned upon a successful merger:

(A) paid or payable during the period beginning 24 months before the date the boards of directors of both credit unions approve the merger plan or paid during the merger or to be paid in the 24 month period after the merger;

(B) representing an addition or increase in direct or indirect compensation, such as salary, bonuses, leave, deferred compensation, early payout of retirement benefits, severance packages, retainers, service agreements, vesting of rights, non-compete agreements, insurance policy; or other contractual rights; or

(C) for honorarium(s), brokers fees, finders' fees or other financial rewards, before or after the merger.

(D) this term does not include benefits available to employees at will of the acquiree credit union on identical terms and conditions to acquirer's employees at will, should employment at will be continued.

[(4)] (5) Substantial – An amount that is large in size, value, or importance. For purposes of this section, an amount is substantial if it exceeds **[\$1,000.00] \$10,000.00** in total.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement **directly** to another credit union's members as a means of promoting a merger of the two credit unions.

(c) Notice of Intent to Merge/Consolidate.

(1) The credit unions shall notify the commissioner in writing of their intent to merge/consolidate within ten days after the credit unions' boards of directors formally agree in principle to merge/consolidate.

(2) The Notice of Intent shall include a general description of any known merger related financial arrangements and any core processing contract termination of either credit union.

(d) Plan for Merger/Consolidation. Upon approval of a proposition for merger/consolidation by the boards of directors, the credit unions must prepare a plan for the proposed merger/consolidation. The plan shall include:

(1) The terms and conditions of the merger/consolidation including a detailed description of any **[substantial remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other substantial financial rewards or benefits that any board member or senior management employee of the acquiree credit union may receive in connection with the merger/consolidation] and all merger related financial arrangements and proposed or executed contracts related to the merger;**

(2) A statement that the boards of directors and officers have satisfied their fiduciary duties to the credit unions members when making a decision to merge, they reviewed their duties as outlined in the Texas Credit Union Act and Rules for Credit Unions. (Texas Finance Code Section 122.061; Section 91.501(e) (2) and (3) of the Rules for Credit Unions and the Acquirer or Acquiree's bylaws).

(3) A short history of the background of merger discussions and deliberations with copies of any meeting minutes from beginning of negotiations through the plan and/ or merger resolution.

(4) For the Acquiree:

(A) general reason(s) Acquiree believes that merging, as the party ceasing to exist, is in the best interest of its members;

(B) other potential Acquirers that were evaluated by Acquiree,

(C) the Acquiree's criteria for selection of an ideal merger partner;

(D) if only one Acquirer was evaluated, a statement supporting that consideration of a sole candidate is in the best interest of Acquiree's membership.

(5) Support for the calculation of any merger related financial arrangements.

(6) [(2)] The current financial reports of each credit union;

(7) [(3)] The combined financial reports of the two or more credit unions;

(8) [(4)] An analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

(9) [(5)] An explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;

(10) [(6)] A summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;

(11) [(7)] A summary of the advantages and disadvantages of the merger/consolidation;

(12) [(8)] the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(13) [(9)] Any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(14) If the Commissioner determines the merger to be an emergency, any specific plan requirements may be waived in order to assure uninterrupted service to members.

(e) Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;
(C) the proposed Notice of Special Meeting of the members;
(D) a copy of the ballot form to be sent to the members;
(E) the current delinquent loan summaries for each credit union;
(F) a statement as to whether the transaction is subject to the Hart-Scott Rodino Act premerger notification filing requirements; **[and]**

(G) receipt of any additional information requested by the Commissioner;
and

(H) [(G)] a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the acquirer credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(3) Notice of the proposed merger must be published in the *Texas Register* and Department Newsletter as prescribed in §91.104 (relating to Public Notice and Comment on Certain Applications).

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval.

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition **or operations** of the acquirer credit union before **or projected after** the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; **[or]**

(F) the application or proposed notice to members is false, deceptive or misleading, after the ability to cure provisions as defined in §91.125(b) expire; or

(G) [(F)] the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the acquirer credit union after merger/consolidation are proposed to be substantially the same as those of the

acquiree and acquirer credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) specify the purpose of the meeting and state the date, time, and place of the special meeting;

(B) state the reasons for the proposed merger/consolidation;

(C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner;

(D) provide the name and location of the acquirer credit union;

(E) specify the methods permitted for casting votes; **[and]**

(F) if applicable, be accompanied by a mail ballot **and [.]**

(G) merger related financial arrangements must be detailed on a separate page enclosed with the meeting notice, ballot and plan summary.

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree credit union will be canceled.

FUTURE COMMITTEE MEETING DATES

BACKGROUND: 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.

Next Committee Meeting: The next regular meeting of the Committee will be tentatively scheduled during the July 17, 2025 meeting.

ADJOURNMENT