

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](mailto: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.

§91.1003. 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 arrangement.**

(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 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.

(3) 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.

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

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

(6) [(3)] The combined financial reports of the two or more credit unions, including consolidated estimated contract termination costs and any merger related financial arrangement costs;

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

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

(9) [(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;

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

(11) [(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

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

(13) 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 **or acquiree** 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.