CREDIT UNION COMMISSION
RULES COMMITTEE MEETING

Credit Union Department Building
914 East Anderson Lane
Austin Texas

Thursday, December 4, 2025
10:00 a.m.

AGENDA

This meeting of the Texas Credit Union Commission's Rules Committee will be held at the Credit Union Department Building at 914 E. Anderson Ln., Austin, Texas 78752, and virtually, and is open to the public. Only onsite testimony will be allowed; however, the meeting will be transmitted live through a link on the Department's webpage at www.cud.texas.gov on the day of the meeting, December 4, 2025, at 10:00 a.m.

An electronic copy of the agenda is now available at www.cud.texas.gov under Credit Union Commission, Commission Meetings, along with a copy of the meeting materials. A recording of the meeting will be available after December 4, 2025. To obtain a recording, please contact Devon Bijansky 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.

d. 7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms) **54**
e. 7 TAC, Part 6, Chapter 93, Subchapter B (Appeals from Commission Decisions, Generally) **55**
f. 7 TAC, Part 6, Chapter 93, Subchapter C (Appeals of Preliminary Determinations on Applications) **60**
g. 7 TAC, Part 6, Chapter 93, Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal) **61**
h. 7 TAC, Part 6, Chapter 93, Subchapter E (Appeals of Orders of Conservation) **62**
i. 7 TAC, Part 6, Chapter 93, Subchapter F (Review and Decision by the Commission) **63**

3. Proposal of Amendments to:
   a. 7 TAC, Part 6, Chapter 91, Subchapter D, Section 91.401, Credit Union Ownership of Property **64**

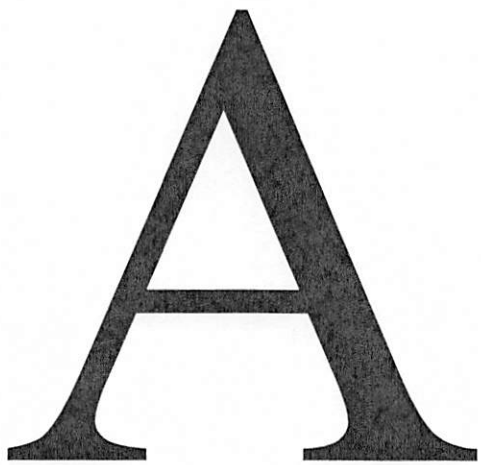
D. Adjourn

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

Executive Session: The Credit Union Commission Rules Committee may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Recess: In the event the Committee does not finish deliberation of an item on the first day for which it was posted, the Committee might recess the meeting until the following day at the time and place announced at the time of recess.

Meeting Accessibility: Under the Americans with Disabilities Act, the Credit Union Commission will accommodate special needs. Those requesting auxiliary aids or services should notify Devon Bijansky, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752 - (512) 837-9236, as far in advance of the meeting as possible.



CALL TO ORDER

CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- *David Shurtz, Chair*
- *Becky Ames*
- *Sara Jones Oates*
- *Jim Minge, Ex-Officio*

Legal Counsel

- *Devon Bijansky*

Staff

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

FUTURE COMMITTEE MEETING DATES

The committee meets on an "as needed" or "subject to the call of the chair" schedule. If a meeting is necessary, it would normally be held the day before a regularly scheduled commission meeting.

B

RULES COMMITTEE MEETING MINUTES

A draft copy of the minutes of the Committee's meeting held on July 17, 2025, is located under **TAB B**.

RECOMMENDED ACTION: The Department requests that the Committee approve the minutes as presented.

RECOMMENDED MOTION: I move that the minutes of the Committee's July 17, 2025, meeting be approved as presented.

CREDIT UNION COMMISSION
RULES COMMITTEE
MEETING MINUTES

July 17, 2025

A. CALL TO ORDER – Vice Chair Shurtz called the meeting to order at 9:02 a.m. pursuant to Chapter 551 of the Texas Government Code and declared that a quorum was present. Committee member Becky Ames and Ex-officio member Jim Minge were present. Vice Chair Shurtz was present remotely. Staff members in attendance were Commissioner, Michael S. Riepen, General Counsel, Karen L. Miller, Director of Information Technology, Joel Arevalo, and Executive Assistant, Brenda Medina. The Chair appointed Brenda Medina as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State **(July 7, 2025, TRD#: 2025003870)**.

B. APPROVE MINUTES OF THE LAST COMMITTEE MEETING (MARCH 20, 2025) – Ms. Ames moved to approve the minutes of the March 20, 2025 meeting, as presented. Vice Chair Shurtz seconded the motion, and the motion was unanimously adopted.

C. RULEMAKING MATTERS – CONSIDER RECOMMENDATION FOR PUBLICATION IN THE TEXAS REGISTER.

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

Vice Chair Shurtz asked for a motion regarding a recommendation to the Commission to adopt the proposed amendments. Mrs. Ames moved that the Committee recommend that the Commission adopt the Proposed Amendments to 7 TAC, Part 6, Chapter 97, Subchapter B, Section 97.113. Revised to remove the

changes to Subpart E and remove the addition of Subpart F as a response to public comments. Vice Chair Shurtz seconded the motion, and the motion was unanimously adopted.

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

Vice Chair Shurtz asked for a motion regarding a recommendation to the Commission to adopt the proposed amendments. Mrs. Ames moved that the Committee recommend that the Commission adopt the Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.101 (Definitions and Interpretations). Vice Chair Shurtz seconded the motion, and the motion was unanimously adopted.

(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

Vice Chair Shurtz asked for a motion that the Committee recommend that the Commission find 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 the Commission readopt the rules. Mrs. Ames moved that the Committee recommend that the Commission find 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 the rules continue to exist, and that the Commission readopt the rules. Vice Chair Shurtz seconded the motion, and the motion was unanimously adopted.

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

Vice Chair Shurtz asked for a motion regarding a recommendation to the Commission concerning approval of the proposed amendments for publication and comment. Mrs. Ames moved that the Commission approve for publication and comment the Proposed Amendments to 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.125 (General Rules) concerning Accuracy of Advertising. Vice Chair Shurtz seconded the motion, and the motion was unanimously adopted.

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

Melodie Durst, with the Credit Union Coalition of Texas had a question regarding a comment made by Ms. Miller regarding the new merger related financial arrangements. Ms. Miller responded that a general reason that they believe that merging and ceasing to exist is in the best interest of their members. Suzanne Yashewski, wither Cornerstone Credit Union League stated that she liked a lot of the thoughts discussed, particularly the consolidated financial disclosure. She did have concerns with the wording for the same reasons of the privacy

confidentiality requirements for a lot of the contracts. Vice Chair Shurtz asked Ms. Miller how to handle the suggested revisions to the rule. Ms. Miller responded that removing number 2 on B2, a statement that the boards of directors and officers are satisfied their fiduciary duties and lifting those finance code and little sections that outline those duties. It was included as guidance for the credit union that's voting to merge to encourage them to look at those provisions. Regarding the 3rd party contract, the only point where its mentioned is for a notice of intent. Letting us know that there's a merger related, core processing contract because those are usually the largest; also informing us ahead of time that it exists. So, it's not asking for a copy of the contract in the event that a copy of the contract would be requested would be Under E. Item 1G on page 94 where it says receipt of any additional information requested by the Commission. So that that's where I think that the nuance of having something that we've asked for in the process of evaluating the application IE is where the 3rd party contract would come into play. You know we could add something that says credit union could state their confidential again. I think unfortunately we don't have the AG's opinion that should have been by now to kind of give us guidance here. Because of that I think that just that's a little new. Vice Chair Shurtz suggested that in the future, get a working group together to review some of these next proposed rules.

At 10:40 a.m., Vice Chair Shurtz announced a 20 minute break to reconvene at 11:00 a.m., so that the correct wording for the amended motion could be worked out.

Vice Chair Shurtz reconvened the meeting at 11:10 a.m. and stated that he received the changes to the amendment. Copies of the changes were also provided to the audience members. Vice Chair Shurtz asked Ms. Miller to go through and identify

the changes that were made. Ms. Miller stated that on the first page on C2, the second part was eliminated that referenced processing agreements, so it's just asking the notice of intent gives a general description of any known larger planning related financial arrangement. Regarding pay on the second page under D, 2 was eliminated that referenced the fiduciary duties of the board and was renumbered due to the elimination of number 2. On numbers 6, language was added at 2 at the setting the combined financial reports of the 2 or more credit unions which is the existing language. And we added including consolidated estimated contract termination cost and any merger related arrangement costs that should say financial arrangement cost. We were trying to track the verbiage. Thanks that will add the word financial to that for the Commission. On the 3rd page, Item E2, we added if the acquirer or acquire credit union is organized under the laws of another state of the United states that just allows the commissioner to accept an application to merge or consolidate prescribed by that state or federal supervisory authority. It allows the Commissioner discretion to accept whatever one or the other that application is if there are different chartering. It was deleted because it was redundant of G because the application will be deemed complete upon the receipt of all information requested.

Mr. Bleazard, President/CEO for Service Credit Union wanted to note that the pay per vote scheme that he previously mentioned had not been addressed and suggested that could be discussed in a subsequent consideration of this rule at a future date.

Vice Chair Shurtz asked for a motion on the amended rule. Mrs. Ames made a motion to the committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC, Part 6, Chapter 91, Subchapter

J, Section 91.1003 (Mergers/Consolidations), as amended, and to include the changes read by Mrs. Miller, and that were handed out to the Commission and to the audience. Vice Chair Shurtz seconded the motion, and the motion was unanimously adopted.

FUTURE COMMITTEE MEETING DATES – Vice Chair Shurtz announced the next meeting of the Committee has been tentatively scheduled for November 6, 2025.

There being no further business, Chair Cobb adjourned the meeting at 11:21 a.m.

David Shurtz Vice Chair	Isabel Velasquez Recording Secretary

Distribution:

Legislative Reference Library

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.

RULEMAKING MATTERS

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

1. Adoption of Proposed Amendments:

(a) 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.125 (Accuracy of Advertising
(b) 7 TAC, Part 6, Chapter 91, Subchapter J, Section 91.1003 (Mergers/Consolidations)

2. Adoption of Rule Review and Readoption of Rules:

(a) 7 TAC, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions)
(b) 7 TAC Part 6, Chapter 91, Subchapter M (Electronic Operations)
(c) 7 TAC, Part 6, Chapter 91, Subchapter N (Emergency or Permanent Closing of Office or Operation)
(d) 7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms)
(e) 7 TAC, Part 6, Chapter 93, Subchapter B (Appeals from Commission Decisions, Generally)
(f) 7 TAC, Part 6, Chapter 93, Subchapter C (Appeals of Preliminary Determinations on Applications)
(g) 7 TAC, Part 6, Chapter 93, Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal)
(h) 7 TAC, Part 6, Chapter 93, Subchapter E (Appeals of Orders of Conservation)
(i) 7 TAC, Part 6, Chapter 93, Subchapter F (Review and Decision by the Commission)

3. Proposal of Amendments to:

(a) 7 TAC, Part 6, Chapter 91, Subchapter D, Section 91.401, Credit Union Ownership of Property

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

C

C.1.a. ACCURACY OF ADVERTISING

7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.125, Accuracy of Advertising

BACKGROUND: The amendments clarify that advertising includes announcements and press releases and reaffirm the Commissioner's authority to prohibit the use of advertising, including postings or press releases, that are false, deceptive or misleading. The change from the text as proposed is as follows: the proposed change from ten calendar days to five business days to respond to a notice from the Commissioner under this section is not being adopted.

Notice of the proposed amendments and a request for comments was published in the August 1, 2025, issue of the *Texas Register*. There were two comments submitted regarding the proposal.

RECOMMENDED ACTION: The Department recommends that the Committee recommend the Commission adopt the proposed amendments with the change as noted above.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the Proposed Amendments to **7 TAC Section 91.125, Accuracy of Advertising,** without the proposed change to the number of days in (d).

The Credit Union Commission adopts amendments to §91.125, Accuracy of Advertising, with one change from the proposed text as published in the August 1, 2025, issue of the Texas Register (50 *TexReg* 5027). The amendments clarify that advertising includes announcements and press releases and reaffirm the Commissioner's authority to prohibit the use of advertising, including postings or press releases, that are false, deceptive or misleading. The change from the text as proposed is as follows: the proposed change from ten calendar days to five business days to respond to a notice from the Commissioner under this section is not being adopted.

REASONED JUSTIFICATION. The amendments respond to increased use of online announcements, including in social media, as well as self-issued press releases to promote a credit union or its products, ensuring that these types of communications are held to the same standards for accuracy as traditional advertisements. The amendments improve guidance to the industry by explicitly including announcements and press releases as advertising in an effort to provide greater protection to consumers from false or misleading information.

SUMMARY OF COMMENTS AND RESPONSE. The Commission received comments regarding the proposed amendments from the Cornerstone Credit Union League (Cornerstone) and Randolph-Brooks Federal Credit Union (RBFCU). All comments, including any not specifically referenced herein, were fully considered by the Commission.

Comment: Both commenters expressed concern about the reduction in time to respond to a notice from the Commissioner under this section from ten calendar days to five business days, stating that it could be challenging for a credit union to respond within the shorter timeframe.

Response: The Commission has revised the rule to retain the existing ten calendar day timeframe for responding to a notice regarding deceptive or misleading advertising.

Comment: Both commenters expressed concern about a lack clarity regarding appeals from a cease and desist order issued pursuant to this section.

Response: The Commission notes that section 93.401 of the agency rules outlines the appeal process for cease and desist orders, which includes cease and desist orders issued under this section.

Comment: RBFCU states that misleading content is not well defined in the rule.

Response: while "misleading content" is not a defined term in the rule, the current language of subsection (b) outlines seven scenarios in which an advertisement would be deemed intentionally or negligently false, deceptive, or misleading and therefore not permitted under the rule. The amendments add announcements and press releases to the provisions regarding advertisements to make clear that those instances of intentionally or negligently false, deceptive, or misleading advertising in subsection (b) extend to those types of communications.

STATUTORY AUTHORITY. The amendments are adopted under Texas Finance Code Sections 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas

Finance Code, and 15.4022, which specifically addresses its authority to adopt rules prohibiting false, misleading, or deceptive practices.

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 and 122.151-122.156.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

§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 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.

CORNERSTONE LEAGUE

Uniting & Inspiring Credit Unions to Advance the Greater Good

September 2, 2025

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

Sent Via Email to: 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 91.125, Accuracy of Advertising and 91.1003, Mergers and Consolidations.

Proposed Amendments to 91.125, Accuracy of Advertising
Texas credit unions strongly support the concept of transparency and accuracy in advertising. The clarification that the definition of advertising includes announcements and press releases, particularly published via digital platforms and social media—is a timely update. Ensuring that all public-facing content meets the same standards of accuracy as traditional advertisements is essential to maintaining public confidence and regulatory integrity

That said, the proposal as worded raises an issue of concern for our members. The reduction from 10 to 5 business days for a credit union to prove the truthfulness of a statement that is questioned by the Commissioner or to notify the department of removal of content in question could be a challenging timeline for credit unions. We are concerned that the shortened time frame may constrain credit union resources. Preparation of a reasoned response to a concern raised by the Commissioner is likely to prompt review by a credit union's legal and compliance team as well as executive approval in how best to proceed. To ensure credit unions have adequate time to respond, we respectfully request that the timeframe be left at 10 days per the current rule.

Secondly, some credit unions raised concern that the rule appears to lack clarity regarding whether or not they may appeal a decision by the Commissioner regarding the accuracy of an advertising piece. Therefore, we suggest adding steps for an appeal.

Proposed Amendments to 91.1003, Mergers and Consolidations
Texas credit unions strongly support transparency in the merger and consolidation context. However, the proposal, as worded, raises a few concerns for Texas credit unions. Specifically, some of our members have noted that the proposal appears unnecessarily burdensome and misaligned with the realities of credit unions of different sizes.

In the last Commission meeting and Rules committee meeting, I believe that Commission members agreed to revise the draft proposal to include a consolidated estimate of contract termination costs, rather than detailing each particular contract. Although such consolidated language is referenced in 91.1003(d)(6), we are concerned that disclosure of contract termination costs may be pulled into the definition of "merger-related financial arrangement" thereby necessitating a detailed description rather than a consolidated disclosure.

The reason for this concern is that the definition of "merger-related financial arrangement" under 91.1003(a)(4) includes a financial benefit of over $10,000 to be received by "any individual or entity" conditioned upon the successful merger. One could argue that the cost associated with terminating a contract is conditioned upon a successful merger (if the credit unions did not end up merging, the contracts would not be terminated). The reality is, for most larger credit unions, the termination clause for virtually every contract is likely over $10,000. In addition, many of those contracts include confidentiality clauses. As a result, detailing the terms of a contract termination could be seen as a violation of that contract's confidentiality clause, adding legal liability to the credit unions impacted if they are forced to disclose the details of these contracts.

I believe the purpose of detailed disclosures related to merger-related financial arrangements is intended to be more focused on payouts to staff/officials, and/or entities tied to staff/officials, etc. As a result, we urge the Commission to amend the definition of merger-related financial arrangement to specifically exclude vendor contract termination costs and details. We also request that the Commission define the term "senior employee" to clarify which persons are covered under this term.

Texas credit unions also expressed that the $10,000 threshold for merger-related financial arrangements is too low and should instead account for the size of the credit union (even more so if the definition of merger-related financial agreement includes contract terminations). Credit unions feel itemization is impractical, diverts resources from direct member services, and may in fact end up causing member confusion instead of clarity. Our concern is that credit union members simply do not have a context or frame of reference through which to

determine when costs are appropriate and justifiable. One option may be to scale the reporting threshold to be tied to the size of the credit union.

As a general concept, Texas credit unions believe that a credit union's elected board of directors is in the best position to make governance decisions such as mergers, not the regulator. Credit union boards are better positioned to determine what financial arrangements are relevant and material to disclose, based on context and member impact.

Sincerely,

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

RBFCU
rbfcu.org

September 1, 2025

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

RE: Request for Comment on Texas Credit Union Department Proposed Amendments to § 91.125 and § 91.1003

Dear Ms. Miller,

On behalf of Randolph-Brooks Federal Credit Union ("RBFCU"), this letter is being submitted in response to the Texas Credit Union Department's ("TCUD") request for comment on the proposed changes to advertising accuracy and merger-related arrangements and details.

We recognize the TCUD's commitment to transparency and accuracy in advertising by Texas credit unions and we respectfully submit the following comments on the proposed changes to § 91.125 and § 91.1003.

§ 91.125

RBFCU is committed to ethical practices and sustaining the trust of our membership. Therefore, we generally support the proposed amendments to § 91.125. The clarification that advertising includes announcements and press releases, particularly published via digital platforms and social media—is a timely and necessary update. In today's fast-paced communication environment, ensuring that all public-facing content meets the same standards of accuracy as traditional advertisements is essential to maintaining public confidence and regulatory integrity.

Despite its merits, the amendments may have some undue strain on marketing teams for larger credit unions that already manage high volumes of content across various platforms. The five-day response window, while promoting swift action, may strain internal resources, especially when coordinating legal review, compliance checks, and executive approvals. Also concerning is the broad definition of misleading content in conjunction with the amendment granting the Commissioner authority to issue cease and desist orders if content is deemed misleading. Without a clear appeals process or objective criteria, this could result in inconsistent enforcement or unnecessary disruption to operations.

§ 91.1003

While large credit unions fully support transparency and ethical governance, the proposed amendments to §91.1003, relating to Mergers and Consolidations, introduce requirements that are unnecessarily burdensome and misaligned with the operational realities of large institutions.

Excessive Itemization Threshold Is Impractical

The proposed rule now defines "substantial" as any financial arrangement exceeding $10,000[1]. For large credit unions, this threshold is disproportionately low. These institutions routinely engage in complex transactions involving legal, consulting, and operational costs that exceed this amount. Requiring detailed itemization of every such expense—especially those tied to merger-related financial arrangements—creates an administrative burden that diverts resources from member services and strategic planning.

Moreover, the $10,000 threshold fails to account for scale. What may be "substantial" for a small credit union is routine for a large one. A one-size-fits-all threshold does not reflect the diversity of credit union sizes and structures.

Transparency Should Not Mean Micromanagement

Large credit unions agree that members deserve clear, honest communication about mergers. However, mandating disclosure of every financial arrangement above a fixed dollar amount risks overwhelming members with minutiae that obscure the broader strategic rationale for a merger. Transparency should empower members—not confuse them with excessive detail.

Governance Decisions Belong to the Board, Not Regulators

The proposed amendments shift decision-making authority away from the credit union's elected Board of Directors and toward regulatory bodies. This undermines the cooperative governance model, where boards are entrusted to act in the best interest of members. Boards are better positioned to determine what financial arrangements are relevant and material to disclose, based on context and member impact. Regulators, while essential for oversight, lack the operational insight to assess the appropriateness of specific financial arrangements. The proposed rule assumes a level of regulatory expertise in evaluating compensation, severance, and service agreements that may not exist.

In addition, the amendments require disclosure of merger-related financial arrangements but

[1] Credit Union Department. Proposed 91.1003(A). (ND). https://cud.texas.gov/wp-content/uploads/2025/08/Proposed-91.1003-07-2025-with-Rule-TexReg.pdf

offer no objective criteria for what constitutes an "appropriate" or "justifiable" expense. This ambiguity opens the door to inconsistent enforcement and subjective interpretation, which could delay or derail mergers that are otherwise beneficial to members.

By imposing rigid disclosure requirements and vague standards, the rule may discourage credit unions from pursuing mergers that could enhance member services, financial stability, and geographic reach. This is especially concerning in a competitive financial landscape where scale and efficiency are increasingly vital.

Conclusion

Large credit unions support transparency and member-first governance. It is the opinion of RBFCU that while well-intentioned, the amendments to § 91.125 could benefit from leaving the 10-business day window as is and providing a clear definition of misleading content and providing unambiguous objective criteria for advertising.

However, the proposed amendments to § 91.1003 impose disproportionate burdens on larger credit unions, undermine board authority, and introduce regulatory ambiguity. A more balanced approach would allow boards to exercise discretion in disclosures, guided by principles of materiality and member relevance, rather than rigid thresholds and exhaustive itemization.

We thank you for the opportunity to comment.

Sincerely,

Berenice Justiniani-Villareal
Executive Vice President - Chief Risk Officer
Randolph-Brooks Federal Credit Union

C.1.b. MERGERS/CONSOLIDATIONS

7 TAC, Part 6, Chapter 91, Subchapter J, Section 91.1003, Mergers/ Consolidations

BACKGROUND: The proposed amendments detail disclosures and board due diligence documentation that must be included in merger plans and merger notices to members, including merger-related financial arrangements, which the amendments define. The amendments also respond to concerns that the current rule does not ensure that credit union boards of directors proposing to merge provide full transparency with regard to costs associated with the merger and persons and entities that will benefit financially from it. Because credit unions are member-owned, members should be able to rely on both the regulator and their board to protect their investment; these amendments provide for additional transparency with both the Department and members.

Changes from the text as proposed are as follows:

- the definition of merger-related financial arrangement was revised to explicitly exclude payment of termination and conversion costs related to contracts preexisting the merger
- language relating to "objective criteria" was deleted from the definition of "merger inducement"
- contract termination costs under $100,000 were exempted from the statement of consolidated estimated contract termination costs;
- language was added regarding provision of clear, accurate information to the Department and to members
- a number of non-substantive formatting and organization revisions

Notice of the proposed amendments and a request for comments was published in the August 1, 2025, issue of the *Texas Register*. There were two comments submitted regarding the review.

RECOMMENDED ACTION: The Department recommends that the Committee recommend the Commission adopt the proposed amendments with the changes as noted above.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission adopt the proposed amendments to **7 TAC Section 91.1003, Mergers/Consolidations,** with the changes reflected in the materials.

The Credit Union Commission adopts amendments to §91.1003, Mergers/Consolidations, with changes from the proposed text as published in the August 1, 2025, issue of the Texas Register (50 *TexReg* 5028). The amendments detail disclosures and board due diligence documentation that must be included in merger plans and merger notices to members, including merger-related financial arrangements, which the amendments define. The changes from the text as proposed are as follows: the definition of merger-related financial arrangement was revised to explicitly exclude payment of termination and conversion costs related to contracts preexisting the merger; language relating to "objective criteria" was deleted from the definition of "merger inducement"; contract termination costs under $100,000 were exempted from the statement of consolidated estimated contract termination costs; language was added regarding provision of clear, accurate information to the Department and to members; and a number of non-substantive formatting and organization revisions were made.

REASONED JUSTIFICATION. The amendments respond to concerns that the current rule does not ensure that credit union boards of directors proposing to merge provide full transparency with regard to costs associated with the merger and persons and entities that will benefit financially from it. Because credit unions are member-owned, members should be able to rely on both the regulator and their board to protect their investment; these amendments would provide for additional transparency with both the Department and members.

SUMMARY OF COMMENTS AND RESPONSE. The Commission received comments regarding the proposed amendments from the Cornerstone Credit Union League (Cornerstone) and Randolph-Brooks Federal Credit Union (RBFCU). All comments, including any not specifically referenced herein, were fully considered by the Commission.

Comment: Both commenters expressed concern that the definition of "merger-related financial arrangement" would require contract termination costs to be disclosed to members, potentially violating contractual confidentiality obligations and/or causing confusion.

Response: The Commission has revised the rule to explicitly exclude contract termination costs from the definition of "merger-related financial arrangement."

Comment: Cornerstone noted that "senior employee" within the definition of "merger-related financial arrangement" is unclear and requested that it be defined.

Response: The Commission has revised the rule to delete "senior," as all employees are included within "any individual" in the definition of "merger-related financial arrangement."

Comment: Both commenters expressed concern about the $10,000 threshold for merger-related financial arrangements, stating that disclosure of such small payments related to mergers could be burdensome and potentially confusing to members, suggesting that the threshold be scaled to the size of the credit union.

Response: The Commission respectfully disagrees, as $10,000 is the threshold used by the National Credit Union Administration (NCUA), so credit unions are already employing this threshold with regard to reporting merger-related arrangements to the NCUA.

Comment: Both commenters stated that the disclosure of payments and other details of mergers should be a governance decision made by a credit union's board of directors, not by regulators.

Response: The Commission agrees that credit union boards of directors have significant authority to decide what to disclose in the context of a merger but believes certain basic information needs to be disclosed to the Department and to members. The amendments to this rule were carefully formulated to ensure that the Department and members have the minimum information necessary to make informed decisions about the proposed merger.

STATUTORY AUTHORITY. The amendments are adopted under Texas Finance Code Sections 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, and 122.156, which specifically requires the Commission to adopt procedural relating to mergers.

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 and 122.151-122.156.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

[Note: highlights indicate changes from proposed amendments.]

§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 union's 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, or any entity affiliated with such board or committee member or employee, conditioned upon a successful merger:

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

~~(B) representing~~ (i) 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 policies; or other contractual rights; or

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

~~(D) this term does not include~~ (B) but not including:

(i) benefits available to employees at will of the Acquiree ~~acquiree credit union~~ on identical terms and conditions to Acquirer's ~~acquirer's~~ employees at will, should employment at will be continued; or~~.~~

(ii) termination or conversion costs detailed in contracts existing at the time of the merger between the Acquirer or Acquiree and a third-party vendor.

[(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. Mergers shall be conducted in a manner that provides accurate information to the Department and to the members of each credit union regarding the material terms and anticipated effects of the merger.

(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:

(i) the material terms under consideration, including those that may impact the safety and soundness of the Acquirer; and

(ii) a general description of any known merger-related financial arrangements.

(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. Subject to subsection (e) of this section, the ~~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, as the party ceasing to exist, 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; and

(D) if only one Acquirer was evaluated, a statement supporting that evaluation ~~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 for any termination estimated to cost over $100,000 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 ~~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.

(e) ~~(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.

(f) ~~(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)] for a credit union whose board is seeking a waiver of the requirement that the plan be approved by its members, 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 ~~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 ~~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).

(g) ~~(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 ~~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 ~~acquiree credit union~~ that substantially harms the financial interests of the members, beneficiaries or creditors of the Acquiree ~~acquiree credit union~~;

(C) the merger/consolidation would probably substantially lessen the ability of the Acquirer ~~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 ~~acquirer credit union~~ after merger/consolidation are proposed to be substantially the same as those of the Acquiree and Acquirer ~~acquiree and acquirer credit union~~, 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.

(4) The commissioner may require the credit unions to provide documentation demonstrating that members were given adequate, timely, and comprehensible information about the merger's purpose, terms, and anticipated effects.

(h) ~~(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 ~~acquirer credit union~~;

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

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

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

(4) The notice and supporting materials provided to members must be written in plain language for members to make an informed decision regarding the proposal.

(i) ~~(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, together with a statement by each credit union's board certifying that all required information and disclosures to the Department and to its members have been provided in accordance with this rule. Necessary amendments to the Acquirer's ~~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 ~~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 ~~acquiree credit union~~ will be canceled.

CORNERSTONE LEAGUE

Uniting & Inspiring Credit Unions to Advance the Greater Good

September 2, 2025

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

Sent Via Email to: 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 91.125, Accuracy of Advertising and 91.1003, Mergers and Consolidations.

Proposed Amendments to 91.125, Accuracy of Advertising
Texas credit unions strongly support the concept of transparency and accuracy in advertising. The clarification that the definition of advertising includes announcements and press releases, particularly published via digital platforms and social media—is a timely update. Ensuring that all public-facing content meets the same standards of accuracy as traditional advertisements is essential to maintaining public confidence and regulatory integrity

That said, the proposal as worded raises an issue of concern for our members. The reduction from 10 to 5 business days for a credit union to prove the truthfulness of a statement that is questioned by the Commissioner or to notify the department of removal of content in question could be a challenging timeline for credit unions. We are concerned that the shortened time frame may constrain credit union resources. Preparation of a reasoned response to a concern raised by the Commissioner is likely to prompt review by a credit union's legal and compliance team as well as executive approval in how best to proceed. To ensure credit unions have adequate time to respond, we respectfully request that the timeframe be left at 10 days per the current rule.

Secondly, some credit unions raised concern that the rule appears to lack clarity regarding whether or not they may appeal a decision by the Commissioner regarding the accuracy of an advertising piece. Therefore, we suggest adding steps for an appeal.

Proposed Amendments to 91.1003, Mergers and Consolidations
Texas credit unions strongly support transparency in the merger and consolidation context. However, the proposal, as worded, raises a few concerns for Texas credit unions. Specifically, some of our members have noted that the proposal appears unnecessarily burdensome and misaligned with the realities of credit unions of different sizes.

In the last Commission meeting and Rules committee meeting, I believe that Commission members agreed to revise the draft proposal to include a consolidated estimate of contract termination costs, rather than detailing each particular contract. Although such consolidated language is referenced in 91.1003(d)(6), we are concerned that disclosure of contract termination costs may be pulled into the definition of "merger-related financial arrangement" thereby necessitating a detailed description rather than a consolidated disclosure.

The reason for this concern is that the definition of "merger-related financial arrangement" under 91.1003(a)(4) includes a financial benefit of over $10,000 to be received by "any individual or entity" conditioned upon the successful merger. One could argue that the cost associated with terminating a contract is conditioned upon a successful merger (if the credit unions did not end up merging, the contracts would not be terminated). The reality is, for most larger credit unions, the termination clause for virtually every contract is likely over $10,000. In addition, many of those contracts include confidentiality clauses. As a result, detailing the terms of a contract termination could be seen as a violation of that contract's confidentiality clause, adding legal liability to the credit unions impacted if they are forced to disclose the details of these contracts.

I believe the purpose of detailed disclosures related to merger-related financial arrangements is intended to be more focused on payouts to staff/officials, and/or entities tied to staff/officials, etc. As a result, we urge the Commission to amend the definition of merger-related financial arrangement to specifically exclude vendor contract termination costs and details. We also request that the Commission define the term "senior employee" to clarify which persons are covered under this term.

Texas credit unions also expressed that the $10,000 threshold for merger-related financial arrangements is too low and should instead account for the size of the credit union (even more so if the definition of merger-related financial agreement includes contract terminations). Credit unions feel itemization is impractical, diverts resources from direct member services, and may in fact end up causing member confusion instead of clarity. Our concern is that credit union members simply do not have a context or frame of reference through which to

determine when costs are appropriate and justifiable. One option may be to scale the reporting threshold to be tied to the size of the credit union.

As a general concept, Texas credit unions believe that a credit union's elected board of directors is in the best position to make governance decisions such as mergers, not the regulator. Credit union boards are better positioned to determine what financial arrangements are relevant and material to disclose, based on context and member impact.

Sincerely,

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

RBFCU
rbfcu.org

September 1, 2025

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

RE: Request for Comment on Texas Credit Union Department Proposed Amendments to § 91.125 and § 91.1003

Dear Ms. Miller,

On behalf of Randolph-Brooks Federal Credit Union ("RBFCU"), this letter is being submitted in response to the Texas Credit Union Department's ("TCUD") request for comment on the proposed changes to advertising accuracy and merger-related arrangements and details.

We recognize the TCUD's commitment to transparency and accuracy in advertising by Texas credit unions and we respectfully submit the following comments on the proposed changes to § 91.125 and § 91.1003.

§ 91.125

RBFCU is committed to ethical practices and sustaining the trust of our membership. Therefore, we generally support the proposed amendments to § 91.125. The clarification that advertising includes announcements and press releases, particularly published via digital platforms and social media—is a timely and necessary update. In today's fast-paced communication environment, ensuring that all public-facing content meets the same standards of accuracy as traditional advertisements is essential to maintaining public confidence and regulatory integrity.

Despite its merits, the amendments may have some undue strain on marketing teams for larger credit unions that already manage high volumes of content across various platforms. The five-day response window, while promoting swift action, may strain internal resources, especially when coordinating legal review, compliance checks, and executive approvals. Also concerning is the broad definition of misleading content in conjunction with the amendment granting the Commissioner authority to issue cease and desist orders if content is deemed misleading. Without a clear appeals process or objective criteria, this could result in inconsistent enforcement or unnecessary disruption to operations.

§ 91.1003

While large credit unions fully support transparency and ethical governance, the proposed amendments to §91.1003, relating to Mergers and Consolidations, introduce requirements that are unnecessarily burdensome and misaligned with the operational realities of large institutions.

Excessive Itemization Threshold Is Impractical

The proposed rule now defines "substantial" as any financial arrangement exceeding $10,000[1]. For large credit unions, this threshold is disproportionately low. These institutions routinely engage in complex transactions involving legal, consulting, and operational costs that exceed this amount. Requiring detailed itemization of every such expense—especially those tied to merger-related financial arrangements—creates an administrative burden that diverts resources from member services and strategic planning.

Moreover, the $10,000 threshold fails to account for scale. What may be "substantial" for a small credit union is routine for a large one. A one-size-fits-all threshold does not reflect the diversity of credit union sizes and structures.

Transparency Should Not Mean Micromanagement

Large credit unions agree that members deserve clear, honest communication about mergers. However, mandating disclosure of every financial arrangement above a fixed dollar amount risks overwhelming members with minutiae that obscure the broader strategic rationale for a merger. Transparency should empower members—not confuse them with excessive detail.

Governance Decisions Belong to the Board, Not Regulators

The proposed amendments shift decision-making authority away from the credit union's elected Board of Directors and toward regulatory bodies. This undermines the cooperative governance model, where boards are entrusted to act in the best interest of members. Boards are better positioned to determine what financial arrangements are relevant and material to disclose, based on context and member impact. Regulators, while essential for oversight, lack the operational insight to assess the appropriateness of specific financial arrangements. The proposed rule assumes a level of regulatory expertise in evaluating compensation, severance, and service agreements that may not exist.

In addition, the amendments require disclosure of merger-related financial arrangements but

[1] Credit Union Department. Proposed 91.1003(A). (ND). https://cud.texas.gov/wp-content/uploads/2025/08/Proposed-91.1003-07-2025-with-Rule-TexReg.pdf

offer no objective criteria for what constitutes an "appropriate" or "justifiable" expense. This ambiguity opens the door to inconsistent enforcement and subjective interpretation, which could delay or derail mergers that are otherwise beneficial to members.

By imposing rigid disclosure requirements and vague standards, the rule may discourage credit unions from pursuing mergers that could enhance member services, financial stability, and geographic reach. This is especially concerning in a competitive financial landscape where scale and efficiency are increasingly vital.

Conclusion

Large credit unions support transparency and member-first governance. It is the opinion of RBFCU that while well-intentioned, the amendments to § 91.125 could benefit from leaving the 10-business day window as is and providing a clear definition of misleading content and providing unambiguous objective criteria for advertising.

However, the proposed amendments to § 91.1003 impose disproportionate burdens on larger credit unions, undermine board authority, and introduce regulatory ambiguity. A more balanced approach would allow boards to exercise discretion in disclosures, guided by principles of materiality and member relevance, rather than rigid thresholds and exhaustive itemization.

We thank you for the opportunity to comment.

Sincerely,

Berenice Justiniani-Villareal
Executive Vice President - Chief Risk Officer
Randolph-Brooks Federal Credit Union

C.2. MANDATORY RULE REVIEW

a. **7 TAC, Part 6, Chapter 91, Subchapter D (Powers of Credit Unions**
b. **7 TAC, Part 6, Chapter 91, Subchapter M (Electronic Operations)**
c. **7 TAC, Part 6, Chapter 91, Subchapter N (Emergency or Permanent Closing of Office or Operation)**
d. **7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms)**
e. **7 TAC, Part 6, Chapter 93, Subchapter B (Appeals from Commission Decisions, Generally)**
f. **7 TAC, Part 6, Chapter 93, Subchapter C (Appeals of Preliminary Determinations on Applications)**
g. **7 TAC, Part 6, Chapter 93, Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal)**
h. **7 TAC, Part 6, Chapter 93, Subchapter E (Appeals of Orders of Conservation)**
i. **7 TAC, Part 6, Chapter 93, Subchapter F (Review and Decision by the Commission**

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 D (Powers of Credit Unions), 7 TAC, Part 6, Chapter 91, Subchapter M (Electronic Operations), 7 TAC, Part 6, Chapter 91, Subchapter N (Emergency or Permanent Closing of Office or Operation), 7 TAC, Part 6, Chapter 93, Subchapter A (Common Terms), 7 TAC, Part 6, Chapter 93, Subchapter B (Appeals from Commission Decisions, Generally), 7 TAC, Part 6, Chapter 93, Subchapter C (Appeals of Preliminary Determinations on Applications), 7 TAC, Part 6, Chapter 93, Subchapter D (Appeals of Cease and Desist Orders and Orders of Removal), 7 TAC, Part 6, Chapter 93, Subchapter E (Appeals of Orders of Conservation), and 7 TAC, Part 6, Chapter 93, and Subchapter F (Review and Decision by the Commission) and believes certain revisions are appropriate and necessary. Amendments to rules within these chapters are being separately presented for proposal.

Notice of the review and a request for comments on the rules in these chapters were published in the September 5, 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 recommends that the Committee recommend that the Commission find that the reasons for the rules continue to exist and adopt the rule review.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission find that the reasons for adopting 7 TAC, Part 6, Chapter 91, Subchapters D, M, and N; and Chapter 93 continue to exist and that Commission readopt the rules in these chapters.

Title 7

Part VI. Credit Union Department

Chapter 91

CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

Subchapter D. Powers of Credit Unions

§91.401. Credit Union Ownership of Property.

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

(1) Equipment includes all movable furniture, fixtures, and equipment of the credit union, its branch offices, and consolidated credit union service organizations, including automobiles and other vehicles, and any lien on the above.

(2) Immediate family member--a spouse or other family member living in the same household.

(3) Premises include the cost less accumulated depreciation, of land and buildings actually owned and occupied (or to be occupied) by the credit union, its branch offices, and consolidated credit union service organizations. This includes vaults, fixed machinery, parking facilities, and real estate acquired and intended, in good faith, for future expansion. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.

(4) Senior Management Employee--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) Investment Limitations on Premises. Without the prior written consent of the Department, a credit union may not directly or indirectly invest an amount in excess of its net worth in premises.

(c) Restrictions on Ownership of Property. A credit union shall not acquire premises for the principal purpose of engaging in real estate rentals or speculation.

(d) Transactions with insiders. Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(1) sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family members of such individual; or

(2) purchase or lease an asset in which a director, committee member, senior management employee, or immediate family members of such individual has an interest.

(e) Use requirement for premises. If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.

(f) Consent to Exceed Limitation. Generally, a credit union need not obtain the Department's approval to invest in premises. However, prior approval is required if the total aggregate investment in premises will exceed the credit union's net worth. A credit union shall submit such statements and reports as the Department may require in support of the higher investment limit.

(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:

(A) Consistency with safe and sound credit union practices;

(B) The reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and

(C) The effect of the investment on future earnings.

(2) The Department will consider denying a request for an additional investment in credit union premises when:

(A) The additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or

(B) The credit union has not demonstrated a reasonable need for the additional

investment.

(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.

§91.402. Insurance for Members.

(a) Authority. A credit union may make insurance products available to its members, including insurance products at the individual member's expense, subject to the following conditions:

(1) Except as provided in paragraphs (2) and (3) of this subsection, the purchase of any type of insurance coverage by a member must be voluntary, and a copy of the signed and dated written election to purchase the insurance must be on file at the credit union.

(2) Insurance may be required on a loan if the coverage and the charges for the insurance bear a reasonable relationship to:

(A) the value of the collateral;

(B) the existing hazards or risk of loss, damage, or destruction; and

(C) the amount, term, and conditions of the loan.

(3) if the insurance is a condition of a loan, the credit union shall give the member written notice that clearly and conspicuously states:

(A) that insurance is required in connection with the loan; and

(B) that the member may purchase or provide the insurance from a carrier of the member's choice, or the member may assign any existing insurance coverage.

(4) An officer, director, employee, or committee member of a credit union may not accept anything of value from an insurance agent, insurance company, or other insurance provider offered to induce the credit union to sell or offer to sell insurance or other related products or services to the members of the credit union.

(5) If a credit union replaces an existing loan or renews a loan and sells the member new credit life or disability insurance, the credit union shall cancel the prior insurance and provide the member with a refund or credit of the unearned premium or identifiable charge before selling the new insurance to the member.

(6) The person selling or offering for sale any insurance product in any part of a credit union's office or on its behalf must be at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

(b) Unsafe and Unsound Practice. It is an unsafe and unsound practice for any director, officer, or employee of a credit union, who is involved in the sale of insurance products to members, to take advantage of that business opportunity for personal profit. Recommendations to members to buy insurance should be based on the benefits of the policy, not the compensation received from the sale.

(c) Prohibited Practices. A director, officer, or employee of a credit union may not engage in any practice that would lead a member to believe that a loan or extension of credit is conditional upon either:

(1) The purchase of an insurance product from the credit union of or any of its affiliates; or

(2) An agreement by the member not to obtain, or a prohibition on the member from obtaining, an insurance product from an unaffiliated entity.

§91.403. Debt Cancellation Products; Federal Parity; Adoption by Reference.

(a) Authority. Provided it complies with this section, the Truth in Lending Act (15 U.S.C. 1601), and the applicable provisions of Regulation Z (12 C.F.R. Part 226), a credit union may offer any debt cancellation product, including a debt cancellation contract (DCC) and a debt suspension agreement (DSA), a federal credit union is permitted to offer. For the purposes of this section, a debt cancellation product is a two-party agreement between the credit union and the member under which the credit union agrees to waive, suspend, defer, or cancel all or part of a member's obligation to pay an indebtedness under a lease, loan, or other extension of credit upon the occurrence of a specified event. Debt cancellation products are considered loan products governed by this section and applicable provisions of the Finance Code, not insurance products and, consequently, are not regulated by the Texas Department of Insurance. The credit union may offer debt cancellation products for a fee pursuant to the authority set forth in Finance Code §123.003, relating to enlargement of powers and parity and the authority federal credit unions have to offer such products; the fee also is authorized by Finance Code §124.101, relating to borrower payment of loan expenses. If the debt cancellation product is offered for a fee, the member's participation in the debt cancellation program must be optional, and the member must be informed of the fee and that participation is optional.

(b) Anti-tying and Refund Rules. For any debt cancellation product offered by a credit union:

(1) The credit union may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the member entering into a debt cancellation product with the credit union; and

(2) If the debt cancellation product provides for a refund of unearned fees, the unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method. Before the member purchases the debt cancellation product, the credit union must state in writing that the purchase of the debt cancellation product is optional, the conditions for and method of calculating any refund of the debt cancellation fee, including when fees are considered earned by the credit union, and that the member should carefully review all of the terms and conditions of the debt cancellation agreement prior to signing the agreement.

(c) Notice to Department. A credit union must notify the commissioner in writing of its intent to offer any type of debt cancellation product at least 30 days prior to the product being offered to members. The notice must contain a statement describing the type(s) of debt cancellation product(s) that the credit union will offer to its membership.

(d) Risk Management and Controls. Before offering any debt cancellation products, each credit union's board of directors, shall adopt written policies that establish and maintain effective risk management and control processes for these products. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A credit union should also assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation program. In addition, the policies shall establish reasonable fees, if any, that will be charged, the appropriate disclosures that will be given, and the claims processing procedures that will be utilized.

(e) For purposes of this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(f) Best Practices. The Commission seeks to preserve and promote parity with regard to federal credit unions, foreign credit unions, and other depository institutions, as referenced in Finance Code §§15.402(b-1) and 123.003. The National Credit Union Administration (NCUA)

has provided as guidance for federal credit unions the standards set forth in the rules of the U.S. Office of the Comptroller of the Currency (OCC), related to DCCs and DSAs. The Commission, therefore, adopts by reference the guidance issued by NCUA in May 2003 (Letter No. 03-FCU-06). Credit unions should also look to OCC's rules, codified at 12 C.F.R. Part 37, for guidance as to best practices in the industry regarding the offer and sale of DCCs and DSAs. A copy of the NCUA letter and of the OCC rules may be obtained on the Department website at: www.cud.texas.gov.

§91.404. Purchasing Assets and Assuming Deposits and Liabilities of another Financial Institution.

(a) Scope. A credit union must obtain the approval of the Department before purchasing all or substantially all of the assets and/or assuming certain deposits and other liabilities of another financial institution. This section does not apply to purchases of assets that occur as a result of a credit union's ordinary and ongoing business of acquiring obligations of its members.

(b) Approval Requirement.

(1) A credit union must file an application and obtain the written approval of the Department before entering into any type of purchase and assumption agreement.

(2) In determining whether to approve an application under this section, the Department will consider the purpose of the transaction, its impact on the safety and soundness of the credit union, and any effect on the credit union's existing members. The Department may deny the application if the transaction would have a negative effect on any of those factors.

§91.405. Records Retention and Preservation.

(a) General. Every credit union shall keep records of its transactions in sufficient detail to permit examination, audit and verification of financial statements, schedules, and reports it is required to file with the Department or which it issues to its members. Credit union accounts, books and other records shall be maintained in appropriate form and for the minimum periods prescribed by this section. The retention period for each record starts from the last entry or final action date and not from the inception of the record.

(b) Manner of maintenance. Records may be maintained in whatever manner, or format a credit union deems appropriate; provided, however, the records must clearly and accurately reflect the information required, provide an adequate basis for the examination and audit of the information, and be retrievable easily and in a readable and useable format. A credit union may contract with third party service providers to maintain records required under this part.

(c) Permanent retention. It is recommended that the following records be retained permanently in their original form:

(1) charter, bylaws, articles of incorporation, and amendments thereto; and

(2) currently effective certificates or licenses to operate under programs of various government agencies.

(d) Ten year retention. Records which are significant to the continuing operation of the credit union must be retained until the expiration of ten years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later. The records are:

(1) minutes of meetings of the members, the board of directors, and board committees;

(2) journal and cash record;

(3) general ledger and subsidiary ledgers;

(4) for active accounts, one copy of each individual share and loan ledger or its equivalent;

(5) comprehensive annual audit reports including evidence of account verification; and

(6) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

(e) Five year retention. The following records must be retained until the expiration of five years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later:

(1) records related to closed accounts including membership applications, joint membership agreements, payable on death agreements, signature cards, share draft agreements, and any other account agreements; loan agreements; and

(2) for an active account, any account agreement which is no longer in effect.

(f) Other records. Subject to applicable law, any other type of document not specifically delineated in this rule may be destroyed after five years or upon expiration of an applicable statute of limitations, whichever is longer.

(g) Data processing records. Provisions of this section apply to records produced by a data processing system. Output reports that substitute for standard conventional records or that provide the only support for entries in the journal and cash record should be retained for the minimum period specified in this rule.

(h) Protection and storage of records. A credit union shall provide reasonable protection from damage by fire, flood and other hazards for records required by this section to be preserved and, in selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(i) Records destruction. The board of directors shall adopt a written policy authorizing the destruction of specified records on a continuing basis upon expiration of specified retention periods.

(j) Records preservation. All state chartered credit unions are required to maintain a records preservation program to identify and store vital records in order that they may be reconstructed in the event the credit union's records are destroyed. Storage of vital records is the responsibility of the board but may be delegated to the responsible person(s). A vital records storage center should be established at some location that is far enough from the credit union office to avoid the simultaneous loss of both sets of records in the event of a disaster. Records must be stored every calendar quarter within 30 days following quarter-end at which time records stored for the previous quarter may be destroyed. Stored records may be in any form which can be used to reconstruct the credit union's records. This includes machine copies, microfilm, or any other usable copy. The records to be stored shall be for the most recent month-end and are:

(1) a list of all shares and/or deposits and loan balances for each member's account. Each balance on the list is to be identified by an account name or number. Multiple balances of either shares or loans to one account shall be listed separately;

(2) a financial statement/statement of financial condition which lists all the credit union's assets and liability accounts;

(3) a listing of the credit union's banks, insurance policies and investments. This information may be marked "permanent" and updated only when changes are made.

(k) Records preservation compliance. Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance so long as the processor meets the minimum requirements of this section. Credit unions that have in-house capabilities shall make the necessary provisions to safeguard the backup of data on a continuing basis.

(l) Reproduction of records. A credit union shall furnish promptly, at its own expense, legible, true and complete copies of any record required to be kept by this section as requested by the department.

§91.406. Credit Union Service Contracts.

A credit union may enter into contractual agreements with one or more credit unions or other organizations for the purpose of engaging in authorized activities that relate to electronic data processing, electronic fund transfers, or other member services on behalf of the credit union. Agreements must be in writing and shall advise all parties that the activities and services may be subject to commission rules and examination by the commissioner to the extent permitted by law.

§91.407. Electronic Notification.

A credit union may, in accordance with written board policy, satisfy any "written" member notification requirement of the Act, commission rules, or the credit union's bylaws by electronic means provided:

(1) the member agrees in writing or electronically to use electronic instead of hard-copy notifications;

(2) the member has the ability to print or download the notification;

(3) evidence of the electronic notification is retained in accordance with §91.405 (relating to Records Retention); and

(4) both the credit union and the member have the capacity to receive electronic messages.

§91.408. User Fee for Shared Electronic Terminal.

A credit union that owns an electronic terminal that is connected to a shared network may impose a fee on a non-member for the use of that terminal if imposition of the fee is disclosed in compliance with applicable federal law.

Subchapter M. Electronic Operations

§91.4001. Authority to Conduct Electronic Operations.

(a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, mobile applications, personal computers, the Internet, telephones, and other similar electronic devices.

(b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.

(c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:

(1) Identify, assess, and mitigate potential risks and establish prudent internal controls, and system backup procedures;

(2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:

(A) the prevention of unauthorized access to credit union records and credit union members' records;

(B) the prevention of financial fraud through the use of electronic means or facilities; and

(C) compliance with applicable security device requirements for teller machines contained elsewhere in Chapter 91; and

(3) Employ an incident response plan, which has been subjected to reasonable testing, to minimize the impact of a data breach or other electronic incident while quickly restoring operations, credibility, and security.

(d) All credit unions engaging in such electronic activities must comply with all applicable state and federal laws and regulations as well as address all safety and soundness concerns.

(e) A credit union shall review, on at least an annual basis, its system backup procedures for all electronic activities.

(f) A credit union shall not be considered doing business in this State solely because it physically maintains technology, such as a server, in this State, or because the credit union's product or services are accessed through electronic means by members located in this State.

(g) A credit union that shares electronic space, including a co-branded web site, with a credit union affiliate, or another third-party must take reasonable steps to clearly and conspicuously distinguish between products and services offered by the credit union and those offered by the credit union's affiliate, or the third-party.

§91.4002. Transactional Web Site Notice Requirement; and Security Review.

(a) A credit union must file a written notice with the commissioner at least 30 days before it establishes a transactional web site. The notice must:

(1) Include an address for and a description of the transactional features of the web site;
(2) Indicate the date the transactional web site will become operational; and
(3) List a contact person familiar with the deployment, operation, and security of the transactional web site.

(b) For the purposes of this chapter a transactional web site is an Internet site that enables users to access an account and conduct financial transactions such as transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) Credit unions that have a transactional web site must provide for a review of the adequacy of the web site's security measures annually. The scope of the review should cover the adequacy of physical and logical protection against denial of service attacks and other attack vectors designed to gain unauthorized access to the system. If the credit union outsources this technology platform, it can rely on testing or audits performed for the service provider to the extent it satisfies the scope requirements of this subsection.

Subchapter N. Emergency or Permanent Closing of Office or Operation

§91.5001. Emergency Closing.

(a) If the officer in charge of a credit union determines that an emergency that affects or may affect one or more of the credit union's offices or operations exists or is impending, the officer may determine:

(1) not to conduct the involved operations or open the offices on any normal business day of the credit union until the emergency has passed; or

(2) if the credit union is open, to close the offices or the involved operations for the duration of the emergency.

(b) Subject to subsection (c) of this section, a closed office or operation may remain closed until the officers determine that the emergency has ended and for any additional time reasonably required to reopen.

(c) A credit union that closes an office or operation under this section shall notify the commissioner of its action by any means available and as promptly as conditions permit. In addition, notice of such closure should be posted on the home page of the credit union's website and on its social media pages. An office or operation may not be closed for more than three consecutive days, excluding days on which the credit union is customarily closed, without the commissioner's written approval.

(d) Each credit union shall maintain on file with the department a report of emergency contact information pertaining to its officers, directors, and committee members in such form as the commissioner may prescribe.

(e) In this chapter, the following words and terms shall have the following meanings:

(1) Emergency – means a condition or occurrence that physically interferes with the conduct of normal business at the offices of a credit union or of a particular credit union operation or that poses an imminent or existing threat to the safety or security of persons, property, or both. The term includes a condition or occurrence arising from:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice or snow storm;

(B) labor dispute or strike; disruption or failure of utilities, transportation, communication or information systems and any applicable backup systems;

(C) shortage of fuel, housing, food, transportation, or labor;

(D) robbery, burglary, or attempted robbery or burglary;

(E) epidemic or other catastrophe; or

(F) riot, civil commotion, enemy attack, or other actual or threatened act of lawlessness or violence.

(2) Officer in charge – means the president of the credit union, or a person designated by the president, who shall have the authority to take all necessary and appropriate actions to deal appropriately with the emergency. The president of a credit union shall always have an individual designated as an officer in charge during his/her absence or unavailability.

§91.5002. Effect of Closing.

A day on which a credit union or one or more of its operations is closed during its normal business hours as provided by §91.5001 of this title (relating to Emergency Closings) shall be deemed a legal holiday for all purposes with respect to any credit union business affected by the closed credit union or credit union operation.

§91.5005. Permanent Closing of an Office.

A credit union may permanently close any of its established offices or service facilities. The credit union shall provide notice to its members and the department no later than 60 days prior to the proposed closing. The credit union shall also post a notice to members in a conspicuous manner on the premises of the effected office or service facility and the homepage of the credit union's website and any social media pages at least 30 days prior to the proposed closing.

Title 7

Part VI. Credit Union Department

Chapter 93

ADMINISTRATIVE PROCEEDINGS

CHAPTER 93
Subchapter A. Common Terms

§93.101. Scope; Definitions; Severability.

(a) This chapter provides for an efficient and uniform system of practice and procedure before the Department. This chapter governs the institution, conduct, and determination of adjudicative proceedings, required or permitted by law, whether instituted by the Department or by filing of an application, notice, or any other pleading. This chapter does not enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Department, or the substantive rights or any person or agency. All contested case hearings will be conducted by the State Office of Administrative Hearings and will be governed by Title 1, Chapter 155 of the Texas Administrative Code and this chapter.

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

(1) ADR -- alternative dispute resolution.

(2) ALJ -- administrative law judge employed by the State Office of Administrative Hearings.

(3) APA -- The Administrative Procedure Act (Texas Government Code, Chapter 2001).

(4) Applicant -- Any person seeking a certificate, charter, or approval of an application from the Department.

(5) Contested case or proceeding -- a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commissioner or the Commission after an opportunity for adjudicative hearing. A contested case at the Department commences upon the filing of a proper and timely request for hearing.

(6) Party -- A person admitted to participate in a contested case.

(7) Person -- Any individual, credit union, or other legal entity, including a state agency or government subdivision.

(8) PFD -- a proposal for decision issued by an ALJ.

(9) Respondent -- A credit union or other person against whom a sanction is directed by the Department.

(10) Sanction -- Any administrative penalty, disciplinary action, or enforcement action imposed by the Department.

(11) SOAH -- the State Office of Administrative Hearings.

(12) TAC -- Texas Administrative Code.

(c) The same rules of construction that apply to interpretations of Texas statutes and codes, the definitions in the APA Section 2001.003, and the definitions in subsection (b) of this section govern the interpretation of this chapter. If any section of this chapter 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 any other provision of this chapter.

Subchapter B. General Rules

§93.201. Appeals to the Commission, Appointment of SOAH.

The Department appoints SOAH to be its finder of fact in contested cases. The Department does not delegate to the ALJ and retains for itself the right to determine the sanctions and make the final decision in any contested case. Contested cases shall be conducted in accordance with the APA and SOAH's procedural rules (1 TAC Chapter 155) and shall be heard by an ALJ assigned by SOAH. When the Department submits a request to docket a case, SOAH acquires jurisdiction over a contested case and retains jurisdiction until SOAH issues a proposal for decision (PFD) or final amendments or corrections, if any, to the PFD, or upon SOAH's remand of the case to the Department. In case of conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.

§93.202. Computation of Time.

Unless otherwise required by law, in computing any period of time set forth in this chapter, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a state legal holiday. Time limits shall be computed using calendar days rather than business days.

§93.203. Ex Parte Communications.

(a) Upon receipt of a request for hearing and continuing until the time a motion for rehearing is denied, the time for ruling on such a motion has expired, or the proceeding is otherwise final, the commissioner and members of the commission may not communicate directly or indirectly with any party or a representative of a party in a contested case in connection with any issue of fact or law in the contested case except upon notice and opportunity for each party to participate.

(b) The commissioner and members of the commission may communicate ex parte with employees of the department who did not participate in any hearing in the case in order to utilize special skills or knowledge of the department's staff in evaluating the record in the case. Prohibited ex parte communications shall not include any written communication if the communicator contemporaneously serves copies of the communication on all parties to the contested case.

§93.204. Informal Disposition.

At any time during the proceedings, informal disposition may be made of any contested case by stipulation of the parties, agreed settlement, consent order, or default. No stipulation or agreed settlement between the parties shall be enforced unless it shall have been reduced to writing and signed by parties and made part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated in an order bearing their written consent.

§93.205. Notice of Hearing.

(a) An action subject to this chapter is initiated by the service of such notices as are required to be served under the substantive law governing the particular proceeding. Unless other law authorizing a different notice period is applicable to the particular proceeding, all hearings in contested cases must be preceded by at least 10 day notice, as required by the APA §2001.051. Credit unions shall keep the Department informed as to their correct current mailing address and may be served with initial process by regular, certified, or registered mail to the address furnished the agency.

(b) If a credit union does not file a written answer or other written responsive pleading to the notice required by subsection (a) of this section on or before the 10th day after the date on which the credit union was served with the notice, or if the credit union fails to attend the hearing, the Commissioner may dispose of the case without hearing and grant the relief set forth in the notice.

(c) The Respondent or Applicant shall enter an appearance, with a copy to the Department, within 10 days of the date on which the notice of hearing was served on the person. For purposes of this section, entering an appearance means the filing of a written answer or other responsive pleading with SOAH.

(d) SOAH rules relating to Default Proceedings (1 TAC §155.501) and Dismissal Proceedings (1 TAC §155.501) apply when a Respondent or Applicant fails to appear on the day and time set for the contested case hearing. In that case, the Department may move either for dismissal of the case from SOAH's docket or for the issuance of a default PFD by the ALJ or remand to the Department for entry of default by the Commission or the Commissioner, as appropriate. If the ALJ issues an order dismissing the case from SOAH docket or issues a default PFD, or a remand for entry of default by the Commission, the factual allegations against the Respondent at SOAH are admitted and the Commissioner or the Commission, as appropriate, shall enter a default order against the Respondent. Any claims raised or applications for approval submitted by an Applicant will be deemed denied.

§93.207. Service of Documents on Parties.

(a) Unless otherwise specified in this chapter, notice to a party or a party's representative in a contested case shall be by hand-delivery, by facsimile transmission, by email if all parties agree, or by regular, certified or registered mail, to the party's last known address. Service by mail shall be complete when the properly addressed document is deposited in a post office or official depository under the care and custody of the United States Postal Service.
(b) A certificate by a party, who files a pleading stating that it has been served on all other parties, is prima facie evidence of service.

§93.208. Delegation of Authority.

Unless otherwise provided by law, the commission or the commissioner may delegate to a representative any ministerial duly imposed on the commission or the commissioner, respectively. The provisions of any rule referring to the commission or the commissioner shall be construed to also apply to the duly authorized representative of the commission or the commissioner.

§93.209. Subpoenas.

a) Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing shall file a written request with the commissioner setting forth the name and address of the witness, time and place of appearance, and any documents or tangible things sought to be produced. Each request shall contain a statement of the reasons why the subpoena should be issued.
(b) Upon a finding that a party has shown good cause for the issuance of the subpoena, the commissioner shall issue the subpoena as prescribed by Government Code §2001.089. The party requesting the subpoena shall be responsible for the payment of any fees or expenses as set out in Government Code §2001.103.

(c) Within ten days after service of the subpoena or, if the compliance date is less than ten days after service, before the compliance date stated in the subpoena, the person to whom the subpoena is directed shall serve upon the commissioner, the ALJ, and the attorney or party designated in the subpoena, any written objection to the subpoena, appearance or to the inspection or copying of any or all of the designated material. The party serving the subpoena shall have five days to file a written response to the objection. No oral argument shall be heard on the objection unless the commissioner or ALJ directs.

§93.210. Discovery; Protective Orders; Motions To Compel.

Except as modified by SOAH, parties have the discovery rights set out in the Administrative Procedure Act. If a party or witness is asked to produce information that is exempt or privileged under the Texas Rules of Civil Procedure or the Texas Rules of Civil Evidence, the party, in addition to filing a written objection under §93.209(c) of this title (relating to Subpoenas), may make a motion with the ALJ for a protective order. The objecting party must request an *in camera* inspection as set out in 1 TAC §155.251(c)(7). The ALJ shall rule on all objections and motions under this section.

§93.211. Administrative Record.

(a) The cost of a transcript of an administrative proceeding requested by a party is paid by the party requesting the transcript. If the ALJ *sua sponte* orders that an administrative hearing be recorded by a court reporter, the cost of a transcript of the administrative proceeding is split equally between the parties.

(b) In the event a final decision or final order is appealed to district court and the Department is required to transmit to the reviewing court a copy of the administrative record of the administrative proceeding, or any part thereof, the appealing party shall pay all of the costs of the preparation of any original or certified copy of the administrative record of the administrative proceeding, including the preparation of any transcript of the hearing that is required to be sent to the reviewing court. If more than one party appeals the decision, the cost of the preparation of the administrative record shall be divided equally among the appealing parties or as agreed by the parties.

§93.212. Proposal for Decision.

(a) Following a contested case hearing, the ALJ shall review the evidence and testimony and prepare a PFD which shall include findings of fact and conclusions of law, and, if appropriate, may include recommendations for an appropriate decision or sanction.
(b) The ALJ shall serve copies of the PFD on all parties of record within 30 days after conclusion of the hearing. The parties may submit exceptions to the PFD and replies to the exceptions. Exceptions, replies to exceptions, and related briefs must be submitted to the ALJ and to the commission through the department and, unless otherwise indicated, must be filed within deadlines established by the ALJ. The ALJ may amend the PFD in response to the exceptions, replies, or briefs submitted. If the ALJ makes substantive revisions, the ALJ shall circulate the amended PFD to the parties for additional exceptions and briefs before submitting the PFD to the Department.
(c) The ALJ shall submit the PFD together with all materials listed in the APA §2001.060, to the Department. No additional briefs may be submitted after the case is under submission to the commission for decision unless requested by the commission. The APA §2001.058 provides the standards the commission must follow if its decision differs from the PFD.
(d) The commission shall make a decision regarding the PFD within 30 days of the date of receipt of the PFD.

§93.213. Appearances and Representation.

A party may be represented by an attorney or by an authorized representative, if that person observes proper decorum and the instructions of the ALJ. The ALJ may require any person appearing in a representative capacity to provide evidence of authority to appear as the party's representative.

§93.214. Recovery of Department Costs.

The ALJ may allocate costs incurred by the department among the parties in accordance with applicable law. Notwithstanding any other provision of this chapter, the ALJ may impose costs that are solely or primarily attributable to a particular party against that party.

Subchapter C. Appeals of Preliminary Determinations on Applications

§93.301. Finality of Decision; Request for SOAH Hearing; Waiver of Appeal.

(a) The commissioner shall issue a preliminary decision on all applications. Unless a party files a timely written appeal to the commission, the preliminary decision of the commissioner will become final and non-appealable when the time for appeal set out in Finance Code §122.007 or §122.011 expires. If a party submits a written waiver of its right to appeal, the preliminary commissioner's decision becomes final and non-appealable on receipt of the waiver. If a party files a timely appeal, the commissioner's preliminary decision is automatically withdrawn and the Department will refer the matter to SOAH. The commissioner may, at the commissioner's sole discretion, refer any matter to SOAH for hearing prior to and in lieu of entering a preliminary decision.

(b) Notwithstanding subsection (a) of this section, if an application is approved without modification, and no protest or comment was received during the notice period, the commissioner may determine that the preliminary decision of approval should become final immediately.

§93.302. Referral to ADR.

The commissioner may order the parties to participate in non-binding ADR if the commissioner determines that any two of the following conditions are present:

(1) the parties have not engaged in meaningful negotiation;
(2) the controversy is reasonably susceptible to compromise or resolution; or
(3) ADR may produce cost savings.

§93.303. Hearings on Applications.

(a) If ADR is not used or if it fails to resolve the controversy, an applicant or other person aggrieved by the commissioner's preliminary determination may appeal to the commission. In such a case, the commissioner shall refer the matter to SOAH and will furnish to the ALJ all statutes, rules and policies upon which the preliminary decision, if any, was based.

In preparing a PFD, the ALJ shall consider this information along with the testimony and documentary evidence presented at the hearing.

(b) Burden of Proof for Unprotested Applications. The applicant must prove each of the statutory and regulatory requirements for approval by a preponderance of the evidence.

(c) Burden of Proof for Protested Applications. The applicant must prove each of the statutory and regulatory requirements for approval by a preponderance of the evidence. In cases in which field of membership is at issue, the protestant must establish by a preponderance of the evidence that overlapping fields of membership will unreasonably harm the protestant. For the purposes of this section, to constitute "unreasonable harm" an overlap must threaten the protestant's welfare and stability or its financial viability to such an extent that it would adversely impact its safety and soundness as a credit union.

§93.305. Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title.

If ADR is not used or fails to resolve the controversy, whether the application is protested or unprotested, the applicant has the burden to prove each of the applicable statutory and regulatory requirements for approval by a preponderance of the evidence.

Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal

§93.401. Appeals Of Cease And Desist Orders And Orders Of Removal.

(a) Unless the board of directors or person affected by the order files a timely written appeal, the commissioner's cease and desist order or order of removal becomes final and non-appealable when the applicable statutory time for appeal expires.
(b) If a timely request for appeal is filed, the commissioner shall forward the matter to SOAH to set a hearing.
(c) The hearing on a cease and desist order or order of removal is closed to the public. The orders, correspondence, and records relating thereto, are confidential and cannot be revealed to the public. Parties with access to confidential information during the contested case must sign a confidentiality agreement as provided in §91.8000(f) of this title (relating to Discovery of Confidential Information).
(d) At the hearing, the commissioner must establish a prima facie case that the statutory or regulatory violations or the unsafe or unsound practices justify the cease and desist order or order of removal.

§93.402. Stays.

Where an order by its terms, by statute, or by these rules will become final before a hearing can be held, any aggrieved party who has filed a timely request for hearing under this chapter may file a written request with the commissioner to stay part or all of the order until the matter has been heard and a final decision issued. The commissioner may grant a stay where the respondent has adequately demonstrated a reasonable defense which might result in the respondent prevailing on the merits at the hearing, the respondent will be irreparably injured in the absence of the stay, the stay would not substantially or irreparably harm other interested persons, and the stay would not jeopardize the public interest or contravene public policy.

Subchapter E. Appeals of Orders of Conservation

§93.501. Appeals of Orders of Conservation.

(a) Unless the credit union's former board of directors files a timely written appeal, the commissioner's order of conservation becomes final and non-appealable when the statutory time for appeal expires.

(b) If a timely request for hearing is filed with the appeal, the commissioner shall forward the matter to SOAH to set a hearing.

(c) The credit union's former board of directors has the burden to prove by a preponderance of the evidence that the board should regain control of the credit union. The SOAH hearing on an order of conservation is closed to the public. All orders and correspondence relating thereto are confidential and may not be revealed to the public. Parties with access to confidential information during the contested case must sign a confidentiality agreement as provided in §91.8000(f) of this title (relating to Discovery of Confidential Information).

(d) Parties must file exceptions, if any, to the PFD within five days after the date of service of the PFD. Replies to exceptions shall be filed within three days of the date of service of the exceptions.

(e) The Commission shall meet to consider the PFD no later than 45 days after the Department receives the PFD from SOAH.

§93.502. Retention of Attorney.

In the event a credit union retains an attorney or hires other persons to assist the credit union in contesting or satisfying the requirements of an order of conservation, the commissioner shall authorize the payment of reasonable fees and expenses for such persons as expenses of the conservatorship. In order for the commissioner to determine the reasonableness of the fees and expenses, the credit union must submit a billing statement showing the billable rate, the number of hours claimed, and a detailed description of services performed and related expenses incurred. The credit union may also submit copies of other bids received for the services, research substantiating the reasonableness of the fees charged, or any other evidence the credit union believes may support the reasonableness of the fees and expenses. Any fees or expenses the commissioner deems unreasonable shall not be authorized for payment.

Subchapter F. Appeal of Commissioner's Final Determination to the Commission

§93.602. Decision by the Commission.

The Commission shall consider the questions raised in the appeal, as well as any additional matters pertinent to the appeal, whether or not included in the motion for appeal. Decisions by the Commission must be based on testimony and other evidence in the hearing record. The Commission may adopt or decline to adopt, with or without changes, all or part of the commissioner's decision or the ALJ's PFD and the underlying findings of fact and conclusions of law. The Commission may remand the proceeding for further consideration by the commissioner with or without reopening the hearing. The Commission may take any additional actions it considers to be just and reasonable, as permitted by law.

§93.603. Oral Arguments Before the Commission.

Any party wishing to present oral arguments to the Commission must make a written request at least fifteen days before the scheduled Commission meeting. The request must state the length of time the party seeks. The Commission, may grant or deny the request. If the request is granted, the Commission will determine the amount of time allotted and the issues on which oral argument is allowed. The Commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that Commission members may have.

§93.604. Motion for Rehearing.

The procedures and deadlines of APA govern the filing of a motion for rehearing with the Commission.

§93.605. Final Decisions and Appeals.

(a) The Commission's decision is final and non-appealable:

(1) if a motion for rehearing is not filed on time, upon the expiration of the period for filing a motion for rehearing; or

(2) if a motion for rehearing is filed on time, on the date the order overruling the motion for rehearing is rendered; or the motion is overruled by operation of law.

(b) A party to a contested case who has exhausted all administrative remedies and who is aggrieved by a final decision of the Commission in a contested case may seek judicial review of the decision.

C.3.a. CREDIT UNION OWNERSHIP OF PROPERTY

7 TAC Part 6, Chapter 91, Subchapter D, Section 91.401, Credit Union Ownership of Property

BACKGROUND:. The proposed amendments, identified as a part of the Credit Union Department's quadrennial rule review process, would harmonize the definition of "premises" with the National Credit Union Administration's definition for purposes of the limitation on credit union ownership of property, delete references to terms that were removed from the rule with the 2015 amendments, and make organizational and other non-substantive changes for improved readability.

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

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for proposal and publication the amendments to **7 TAC, Part 6, Chapter 91, Subchapter D, Section 91.401**, Credit Union Ownership of Property.

The Credit Union Commission proposes amendments to §91.401, Credit Union Ownership of Property.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed amendments, identified as a part of the Credit Union Department's quadrennial rule review process, would harmonize the definition of "premises" with the National Credit Union Administration's definition for purposes of the limitation on credit union ownership of property, delete references to terms that were removed from the rule with the 2015 amendments, and make organizational and other non-substantive changes for improved readability.

COST TO REGULATED PERSONS. 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 therefore exempt under §2001.0045(c)(8).

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

For each year of the first five years that the rule as amended 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 Department;
--require an increase or decrease in 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.

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.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS. Mike Riepen, Commissioner, 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. Mr. Riepen has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the amended rules are in effect, the public benefit is increased clarity and readability of the rule. He has further 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 anticipated effect on a local economy for the first five years that the proposed amendments are in effect. Therefore, no economic impact statement, local employment impact statement, or regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Riepen 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.

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.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed amendments and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. Please include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Written comments on the proposed amendments may be submitted in writing to Devon Bijansky, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received within 30 days after publication of the proposal 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 124.351.

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 Section 124.351.

91.401 Credit Union Ownership of Property

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

[~~(1) Equipment includes all movable furniture, fixtures, and equipment of the credit union, its branch offices, and consolidated credit union service organizations, including automobiles and other vehicles, and any lien on the above.~~]

(1) [~~(2)~~] Immediate family member – [–]a spouse or other family member living in the same household.

(2) [~~(3)~~] Premises – any office, branch office, suboffice, service center, parking lot, other facility, or real property where the federal credit union transacts or will transact business. [~~include the cost less accumulated depreciation, of land and buildings actually owned and occupied (or to be occupied) by the credit union, its branch offices, and consolidated credit union service organizations. This includes vaults, fixed machinery, parking facilities, and real estate acquired and intended, in good faith, for future expansion. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.~~]

(3) [~~(4)~~] Senior management employee [~~Management Employee~~] – [–]the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) Restrictions on Ownership of Property. A credit union shall not acquire real property for the principal purpose of engaging in real estate rentals or speculation. A credit union investing in real property, including a leasehold interest therein, with a good faith intention to use it in future expansion must put the majority of each property into service for credit union business within five years after making the investment.

(c) [~~(b)~~] Investment Limitations on Premises. Without the prior written consent of the Department, a credit union may not directly or indirectly invest an amount in excess of its net worth in premises. In support of an application for approval of an additional investment in premises, a credit union shall submit such statements and reports as the Department requires.

(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:

(A) consistency with safe and sound credit union practices;

(B) the reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and

(C) the effect of the investment on future earnings.

(2) The Department will consider denying a request for an additional investment in credit union premises when:

(A) the additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or

(B) the credit union has not demonstrated a reasonable need for the additional investment.

(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.

[~~(c) Restrictions on Ownership of Property. A credit union shall not acquire premises for the principal purpose of engaging in real estate rentals or speculation.~~]

(d) Transactions with insiders.

(1) Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(A) [~~(1)~~] sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family member[s] of such individual; or

(B) [~~(2)~~] purchase or lease an asset in which a director, committee member, senior management employee, or immediate family member[s] of such individual has an interest.

(2) All transactions with family members not specifically addressed by this section must be conducted at arm's length and in the interest of the credit union.

[~~(e) Use requirement for premises. If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.~~]

[~~(f) Consent to Exceed Limitation. Generally, a credit union need not obtain the Department's approval to invest in premises. However, prior approval is required if the total aggregate investment in premises will exceed the credit union's net worth. A credit union shall submit such statements and reports as the Department may require in support of the higher investment limit.~~

~~(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:~~

~~(A) Consistency with safe and sound credit union practices;~~

~~(B) The reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and~~

~~(C) The effect of the investment on future earnings.~~

~~(2) The Department will consider denying a request for an additional investment in credit union premises when:~~

~~(A) The additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or~~

~~(B) The credit union has not demonstrated a reasonable need for the additional investment.~~

~~(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

D

D. Adjournment