



**CREDIT UNION COMMISSION  
RULES COMMITTEE MEETING**  
Credit Union Department Office  
914 East Anderson Lane  
Austin, Texas 78752

Thursday, March 26, 2026  
1:00 p.m.

**AGENDA**

This meeting of the Credit Union Commission’s Rules Committee (“Committee”) will be held at the Credit Union Department office at 914 East Anderson Lane in Austin, Texas. The meeting is open to the public and will be broadcast live through a link available on the Department website ([cud.texas.gov](http://cud.texas.gov)) on the day of the meeting. Public comment on any agenda item or issue within the jurisdiction of the Committee is permitted but must be provided on-site. Unless authorized by a majority of Committee members present, comments will be limited to ten minutes per person.

The meeting will also be recorded, and a copy of the recording will be available upon request after the meeting.

The Committee may discuss and/or take action regarding any item on this agenda.

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**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 could 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 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 its meeting on the first day for which it was posted, the Committee may 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 Department 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.

1. Call to order – Chair David Shurtz
  - a. Ascertain quorum
  - b. Appoint recording secretary
  - c. Acknowledge guests
  - d. Invitation for public input

#### Rules Committee

David Shurtz, Chair

Becky Ames

Sara Jones Oates

Jim Minge, ex-officio

#### Staff

Robert Etheridge, Commissioner

Devon Bijansky, Legal counsel

David Borden, Interim Deputy Commissioner

Isabel Velasquez, Executive Assistant

## 2. Approve minutes of the December 4, 2025, Committee meeting

### Staff recommendation

Approve the minutes as presented

### Recommended motion

I move that the minutes of the Committee's December 4, 2025, meeting be approved as presented.

**CREDIT UNION COMMISSION  
RULES COMMITTEE  
MEETING MINUTES**

**December 4, 2025**

**A. CALL TO ORDER** – Chairman David Shurtz called the meeting to order at 10:00 a.m. pursuant to Chapter 551 of the Texas Government Code and declared that a quorum was present. Committee members Becky Ames, Sara Jones Oates, and Ex-officio member Jim Minge were present. The Chair introduced the Department’s new General Counsel Devon Bijansky, who will serve as the legal counsel for the committee at this meeting. Staff members in attendance were Commissioner Michael S. Riepen, Deputy Commissioner Robert W. Etheridge, Network Specialist, Robert Reid, and Executive Assistant, Isabel Velasquez. The Chair appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (**November 25, 2025, TRD# 2025006784**).

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** – Chair Shurtz invited public input on matters regarding rulemaking for future consideration by the committee. There was none.

**B. RECEIVE MINUTES OF PREVIOUS MEETING (July 17, 2025)** – Chair Shurtz reported to the committee on a few changes regarding the minutes of July 17, 2025. Mrs. Oates moved to approve the minutes of the July 17, 2025, meeting, as amended. Mrs. Ames seconded the motion, and the motion was unanimously adopted.

**C. RULEMAKING MATTERS – ADOPTION OF PROPOSED AMENDMENTS:**

**(a) 7 TAC, Part 6, Chapter 91, Subchapter A, Section 91.125 (Accuracy of Advertising).**

Commissioner Riepen expressed that 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.

Commissioner Riepen reported further that after careful consideration and discussion with General Counsel Devon Bijansky, he was recommending taking no action on the proposed rules due to the current rule allowing sufficient flexibility for the Department to take appropriate action in the event of inaccurate advertising. The proposed amendments would be withdrawn by operation of law if no action is taken within six months of publication in the *Texas Register*.

There being no additional comments and the consensus of the committee, Chair Shurtz declared no action will be taken at this time.

**(b) 7 TAC, Part 6, Chapter 91, Subchapter J, Section 91.1003 (Mergers/Consolidations).**

Commissioner Riepen reported that General Counsel Bijansky would be addressing some of the different amendments that had been discussed concerning this rule. General Counsel Bijansky proceeded to outline the proposed

amendments suggested by two commentors (Cornerstone Credit Union League and Randolph-Brooks Federal Credit Union) as well as proposed amendments by Staff.

Chair Shurtz opened the floor to the public for discussion.

- **Suzanne Yashewski, Regulatory & Compliance Counsel, Cornerstone Credit Union League.** Ms. Yashewski briefly reported that the Cornerstone Credit Union League is a regional trade association that represent credit unions in Texas, but also Oklahoma, Arkansas, Kansas and Missouri. The Cornerstone Credit Union League represents at least 600 credit unions, which most are state-chartered credit unions. Ms. Yashewski further thanked the Department for addressing those issues raised by the members, and overall, the group seems pleased with the current version of the rule. Furthermore, she recommended two changes to the rule:
  - ✚ Updating terminology in proposed §91.1003(d)(7) from Allowance for Loan and Lease Losses to Allowance for Credit Losses, and
  - ✚ Adding the following language to (d)(2): “Minutes may be summarized or redacted to preserve attorney-client privilege and competitively sensitive information”.

After a very lengthy discussion, Ms. Ames made a motion to recommend that the Commission adopt the proposed amendments with the changes as noted above. Mrs. Oates seconded the motion and the motion was adopted. Mr. Shurtz voted “nay”.

**C. RULEMAKING MATTERS – 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).**

Commissioner Riepen reported that a state agency reviews and considers 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. 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 have 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, Subchapter F (Review and Decision by the Commission).** Amendments to rules with these chapters are being separately presented for proposal.

After a short discussion, Mrs. Oates made a motion to recommend that the Commission find that the reasons for adopting these rules continue to exist and that the Commission readopt the rules in these subchapters. Mrs. Ames seconded the motion, which passed unanimously, and the motion was adopted.

**C. RULEMAKING MATTERS – PROPOSAL OF AMENDMENTS TO:**

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

Commissioner Riepen reported that 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.

After a long discussion, during which it was proposed to simplify the definition of “premises” and make other minor changes, Chair Shurtz asked for a motion on the proposed amendments as revised. Mrs. Oates made a motion to the committee to recommend that the Commission approve for publication and comment on the proposed amendments with the changes as required. Mrs. Ames seconded the motion, and the motion was unanimously adopted.

**FUTURE COMMITTEE MEETING DATES** – Chair Shurtz announced the next meeting of the Committee has been tentatively scheduled for March 21, 2026.

There being no further business, Chair Shurtz adjourned the meeting at 11:40 a.m.

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David Shurtz  
Chair

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Isabel Velasquez  
Recording Secretary

**Distribution:**

Legislative Reference Library

### 3. Rulemaking Matters

#### a. Recommend to the Commission adoption or other action on amendments to 7 TAC Section 91.401, Credit Union Ownership of Property

##### Background

These amendments, proposed at the December meeting, 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.

No comments were submitted in response to the proposed amendments.

##### Staff recommendation

Recommend that the Commission adopt the amendments as proposed.

##### Recommended motion

I move that the Committee recommend adoption of the amendments to 7 TAC Section 91.401 as proposed.

## 91.401 Credit Union Ownership of Property

The Credit Union Commission adopts amendments to §91.401, Credit Union Ownership of Property, without changes to the proposed text as published in the December 19, 2025, issue of the *Texas Register* (50 TexReg 8131), and the rule will not be republished.

The amendments simplify the definition of “premises,” delete references to terms that were removed from the rule with amendments made in 2015, change the time for a credit union investing in property to put it into service for credit union business to six years and create a process for requesting an extension of time for consistency with the NCUA regulation, and make organizational and other non-substantive changes for improved readability.

The reasoned justification for the amendments is increased clarity and readability of the rule.

No comments were received in response to the proposed amendments.

The amendments are adopted 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.

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.

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

## 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 real property where the 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 any purpose other than majority use as premises.

(1) 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 six years after making the investment.

(2) The Commissioner may extend the six-year period in paragraph (b)(1). To seek an extension, a credit union must submit a written request and fully explain why it needs the extension. The Commissioner will approve or disapprove the request in writing based on safety and soundness considerations.

(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 defined as immediate family members in paragraph (a)(1) 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.]

### 3. Rulemaking Matters

b. Recommend to the Commission proposal of amendments to:

i. 7 TAC Section 91.1003, Mergers/Consolidations

#### Background

These amendments were developed with input from a working group formed after the December meeting in light of the previously proposed amendments and concerns raised at that meeting. The amendments would prohibit merger inducements and require merger-related financial arrangements (both as defined in the rule) to be disclosed to members. The amendments would also revise certain requirements for approval by the Department, increase consistency between this rule and the NCUA rule, and make non-substantive changes for clarity and readability.

#### Staff recommendation

Recommend that the Commission propose the amendments as presented.

#### Recommended motion

I move that the Committee recommend proposal of the amendments to 7 TAC Section 91.1003 as presented.

## 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) Covered person – the chief executive officer (CEO) or person acting in a similar capacity; the four most highly compensated employees other than the CEO, and any member of the board of directors or supervisory committee.

(4) Merger inducement – Any payment of money, the distribution of property, or other economic benefit offered, provided, or promised to a member of the Acquiree that is conditioned on the member voting, refraining from voting, or voting in a particular manner on a proposed merger or the successful completion of a merger. A merger inducement does not include: [A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.]

(A) a dividend or interest payment distributed proportionally among members based on each member's applicable account balance relative to the total balances on which the dividend or interest is paid;

(B) an interest rebate distributed proportionally among members based on each member's share of the total interest paid to the credit union; or

(C) dividends, interest, or other payments made in the ordinary course of business that are generally available to members and not tied to the proposed merger/consolidation;

(D) products, services, or pricing available to all members of Acquirer and Acquiree;

(E) nominal promotional items distributed in the ordinary course of business; or

(F) access to products, services of Acquirer following the merger/consolidation, including expanded branch access or service offerings.

(5) Merger-related financial arrangement – any agreement, arrangement, or understanding under which a covered person, or an entity affiliated with a covered person, receives or is entitled to receive a substantial increase in compensation or benefits that is

contingent upon, related to, or provided in connection with the completion of a merger/consolidation, including:

(A) any increase in compensation or benefits provided to the covered person during the 24 months preceding the date on which the boards of directors of Acquirer and Acquiree approve the plan for merger/consolidation; and

(B) any increase in compensation or benefits that will be provided to the covered person in connection with the merger/consolidation; and

(C) the aggregate value of all increases in direct or indirect compensation, including salary, bonuses, leave, deferred compensation, accelerated or early payment of retirement benefits, or any other financial reward, excluding compensation or benefits available to all employees of the Acquirer on identical terms and conditions.

(6) [(4)] Substantial--An amount exceeding the greater of 15% of a person's existing compensation or 15% of the value of the person's existing benefits, or \$10,000. [that is large in size, value, or importance. For purposes of this section, an amount is substantial if it exceeds \$1,000.00 in total.]

(b) Merger/Consolidation; No Inducements. 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. An Acquirer may not directly or indirectly, including through a credit union service organization, an affiliate, a contractor, or other third party, offer, provide, arrange, or promise a merger inducement to any member of the Acquiree. [A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.]

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

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

(1) The terms and conditions of the merger/consolidation including a detailed description of all merger-related financial arrangements [any substantial remuneration, such as bonuses, deferred compensation, early payout of retirement benefits, severance packages, retainers, services agreements, or other substantial financial rewards or

~~benefits that any board member or senior management employee of the acquiree credit union may receive in connection with the merger/consolidation];~~

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

(3) the current delinquent loan summaries for each credit union;

(4) the combined financial reports of the Acquirer and Acquiree [two or more credit unions], including an assessment, in accordance with generally accepted accounting principles, of net worth of each credit union prior to the merger/consolidation and the combined net worth of the Acquirer after the merger/consolidation;

(5) ~~(4)~~ an analysis of the adequacy of the combined Credit Loan and Lease Losses account;

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

(7) ~~(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;

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

(9) ~~(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

(10) provisions and/or liabilities with respect to notification and payment to creditors; and

(11) ~~(9)~~ any other items deemed critical to the merger/consolidation by the Acquirer's and Acquiree's boards of directors ~~[agreement by the boards of directors]~~.

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

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

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

(B) any proposed agreement, arrangement, or understanding arising from or required to implement the merger/consolidation;

(C) ~~(B)~~ a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;

(D) ~~[(E)]~~ the proposed Notice of Special Meeting of the members;

(E) ~~[(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) board minutes of Acquirer and Acquiree referencing the merger/consolidation during the 24 months preceding board approval of the merger/consolidation plan; [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).]~~

(H) any additional information requested by the commissioner;

(I) a certification executed by the chief executive officers and chairpersons of the Acquirer and Acquiree stating that no merger-related financial arrangements exist other than those disclosed in the Notice of Special Meeting;

(J) for a credit union seeking a waiver of member approval of the merger/consolidation plan, a written request stating the reasons for the waiver; and

(K) for an Acquirer that is not federally insured and does not intend to become federally insured:

(i) a written statement that it is aware of the federal requirements prescribed by 12 U.S.C. 1831t(b), including all notification requirements; and

(ii) proof that its accounts will be insured by the non-federal insurer.

(2) If the Acquirer ~~[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 plan. An ~~[The]~~ application submitted under this paragraph will be ~~[deemed]~~ complete upon receipt of all information requested by the commissioner.

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

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval. If the commissioner determines that a merger/consolidation constitutes an emergency, the commissioner may waive any specific merger plan or application requirements to ensure uninterrupted service to the members.

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

(A) the financial condition of the Acquirer ~~[acquirer credit union]~~ before the merger/consolidation is such that it will likely jeopardize the financial stability of the Acquiree ~~[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 is likely to [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 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 Acquirer and Acquiree ~~[acquiree and acquirer credit unions]~~, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

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

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the

commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

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

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

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

(C) contain a summary of the merger/consolidation plan, including: ~~[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;]~~

(i) a statement on whether the Acquirer has a higher or lower net worth ratio than the Acquiree;

(ii) an indication of whether the members of the Acquiree will receive a share adjustment, dividend, or other distribution of reserves or undivided earnings and a description of the reasons for the decision;

(iii) a description of any changes regarding the change in the members' deposit insurance if the Acquiree is not federally insured;

(iv) a statement that any interested person may obtain more detailed information about the merger/consolidation from the credit union at its principal place of business, or by any method approved in advance by the commissioner; and

(v) a table, provided on a separate page enclosed with the meeting notice, ballot, and plan summary, describing each merger-related financial arrangement, including the covered person involved, their position, the nature and description of the arrangement, and the total amount of any compensation or benefits associated with the arrangement;

(D) provide the names and street addresses of Acquirer's branch offices after the merger/consolidation ~~[location of the acquirer credit union]; and~~

(E) state that members may vote on the merger/consolidation proposal in person or mail ballot or electronically (if the credit union bylaws allow) no later than the date and time established for the meeting called to vote on the merger/consolidation. [specify the methods permitted for casting votes; and]

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

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the Acquirer'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.

(i) Other requirements. A federally insured credit union subject to this section must comply with applicable provisions of 12 C.F.R. Part 708b. The commissioner may require documentation demonstrating compliance when considering a merger/consolidation application.

### 3. Rulemaking Matters

b. Recommend to the Commission proposal of amendments to:

ii. 7 TAC Chapter 91, Subchapter G:

A. Section 91.709, Member Business and Commercial Loans

B. Section 91.714, Leasing

#### Background

These amendments are the result of the Department's rule review process. The amendments to Section 91.709 clarify the concept of controlling interests in commercial loans and make other non-substantive changes for clarity.

The amendments to Section 91.714 include the deletion of language in subsection (b) about acquisition of property for the purpose of leasing it, which is prohibited by Section 91.401, and addition of a reference to Section 91.401 to ensure consistency between these two sections that relate to ownership and leasing of real property by a credit union.

#### Staff recommendation

Recommend that the Commission propose the amendments as presented.

#### Recommended motion

I move that the Committee recommend proposal of the amendments to 7 TAC Sections 91.709 and 91.714 as presented.

The Credit Union Commission proposes amendments to §§91.709, Member Business and Commercial Loans, and 91.714, Leasing.

#### 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 delete a reference in subsection (b) of §91.714 to acquisition of property for the purpose of leasing it, already prohibited by §91.401, and make non-substantive changes to both rules, including clarifications to §91.709 regarding the concept of controlling interests in commercial loans and to §91.714 by adding a reference to §91.401 to ensure consistency between these sections that both address ownership and leasing of real property by a credit union.

**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 rules as amended will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations 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 rules are not "major environmental rules" as defined by Government Code, §2001.0225. The proposed rules are 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.** Robert Etheridge, 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. Etheridge 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, consistency, and readability of the rules. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the rules.

**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. Etheridge has also determined that for each year of the first five years the proposed amendments are 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 amendments do 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, §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 §123.103.

**STATUTORY SECTIONS AFFECTED.** The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D, particularly Finance Code §123.103.

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

## 91.709 Member Business and Commercial Loans

(a) Definitions. Definitions in TEX. FIN. CODE §121.002, are incorporated herein by reference. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) –(2) (No change.)

(3) "Controlling interest" means an interest in which a person directly or indirectly, or acting through or together with one or more other persons ~~[who]~~:

(A) owns, controls, or has ~~[have]~~ the power to vote twenty-five (25) percent or more of any class of voting securities of another person;

(B) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) has ~~[have]~~ the power to exercise a controlling influence over the management or policies of another person.

(4) – (11) (No change.)

(b) – (h) (No change.)

(i) Aggregation and Attribution for Commercial Loans.

(1) –(2) (No change.)

(3) Common Enterprise.

(A) Description. A common enterprise is considered to exist and commercial loans to separate borrowers will be aggregated when:

(i) the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this subparagraph because of wages and salaries paid to an employee[;] unless the loans or extensions of credit are made ~~[the standards of clause (ii) of this subparagraph are met]:~~

~~[(ii) the loans or extension of credit are made:]~~

~~(l) to borrowers who have a controlling interest in the employer~~ ~~[who are related directly or indirectly through control]~~ as defined by subsection (a) of this section; and

(II) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and other similar receipts or payments;

(ii) [(iii)] separate persons borrow from a credit union to acquire a business of enterprise of which those borrowers will own more than fifty (50) percent of the voting securities of voting interest, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iii) [(iv)] the Department determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(B) – (C) (No change.)

(j) – (m) (No change.)

#### 91.714 Leasing

(a) (No change.)

(b) Permissible activities. Subject to the limitations of this section and section 91.401, a credit union may engage in leasing activities. These activities include [~~becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property;~~] obtaining an assignment of a lessor's interest in a lease of such property[;] and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) – (h) (No change.)

### 3. Rulemaking Matters

b. Recommend to the Commission proposal of amendments to:

iii. 7 TAC Chapter 95, Subchapter A:

A. Section 95.105, Reporting

B. Section 95.108, Examinations

C. Section 95.110, Enforcement; Penalty; and Appeal

#### Background

These amendments are the result of the Department's rule review process. The amendments to §§95.105, Reporting, and 95.110, Enforcement; Penalty; and Appeal, consist of updates to the titles of other sections referenced in the rules as well as minor edits for readability. The amendments to §95.108, Examinations, incorporate provisions from §95.109, Fees and Charges, relating to fees for examinations of insuring organizations, which is recommended for repeal at this meeting.

#### Staff recommendation

Recommend that the Commission propose the amendments as presented.

#### Recommended motion

I move that the Committee recommend proposal of the amendments to 7 TAC Sections 95.105, 95.108, and 95.110 as presented.

The Credit Union Commission proposes amendments to §§95.105, Reporting; 95.108, Examinations; and 95.110, Enforcement; Penalty; and Appeal.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed amendments, identified as a part of the Credit Union Department's quadrennial rule review process, make non-substantive changes to the Department's rules. The amendments to §§95.105, Reporting, and 95.110, Enforcement; Penalty; and Appeal, consist of updates to the titles of other sections referenced in the rules as well as minor edits for readability. The amendments to §95.108, Examinations, incorporate provisions from §95.109, Fees and Charges, relating to fees for examinations of insuring organizations, which is being proposed for repeal elsewhere in this issue.

**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 rules as amended will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations 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 rules are not "major environmental rules" as defined by Government Code, §2001.0225. The proposed rules are 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.** Robert Etheridge, 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. Etheridge 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 rules. 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. Etheridge has also determined that for each year of the first five years the proposed amendments are 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 rules do 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, §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

**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 §15.402.

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

95.105 Reporting

(a) Within one hundred days after the close of each ~~[a]~~ fiscal year, an insuring organization shall file with the commissioner ~~[annually]~~ audited financial statements, prepared in accordance with generally accepted accounting principles, covering that fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant. In addition, at least once every three years, the audit shall include an actuarial study of the capital adequacy of the insuring organization.

(b) The provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Call Reports and Other Information Requests ~~[Reports and Charges for Late Filing]~~).

#### 95.108 Examinations

(a) The department may conduct examinations and investigations within or outside this state to determine whether an insuring organization has engaged, is engaging or is about to engage in any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to the insuring organization.

(b) In lieu of an examination under this section, the commissioner may accept the examination report of another regulator authorized to examine the insuring organization.

(c) If the Department conducts an examination or investigation in accordance with subsection (a) of this section, the insuring organization shall pay the costs as outlined for foreign credit union examinations in §97.113(d)(3) of this title.

(d) At the sole discretion of the Commissioner, the Department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the insuring organization.

#### 95.110 Enforcement; Penalty; and Appeal

(a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b), (c), (d) and (e), to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §121.002(11)(C). If the insuring organization does not comply with the order,

the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.

(b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Appeals of Cease and Desist Orders and Orders of Removal [~~Finality and Request for SOAH Hearing~~]).

### 3. Rulemaking Matters

b. Recommend to the Commission proposal of amendments to:

- iv. 7 TAC Chapter 95, Subchapter C:
  - A. Section 95.302, Powers
  - B. Section 95.305, Audited Financial Statements; Accounting Procedures; Reports
  - C. Section 95.310, Fees and Charges

#### Background

These amendments are the result of the Department's rule review process. The amendments would make non-substantive corrections to the titles of other rule sections referenced in these rules.

#### Staff recommendation

Recommend that the Commission propose the amendments as presented.

#### Recommended motion

I move that the Committee recommend proposal of the amendments to 7 TAC Sections 95.302, 95.305, and 95.310 as presented.

The Credit Union Commission proposes amendments to §§95.302, Powers; 95.305, Audited Financial Statements; Accounting Procedures; Reports; and 95.310, Fees and Charges.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed amendments, identified as a part of the Credit Union Department's quadrennial rule review process, make non-substantive corrections to the titles of other rule sections referenced in the rules.

**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 rules as amended will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations 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 rules are not "major environmental rules" as defined by Government Code, §2001.0225. The proposed rules are 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.** Robert Etheridge, 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. Etheridge 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 accuracy of the rules. 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. Etheridge has also determined that for each year of the first five years the proposed amendments are 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 rules do 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@tud.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 §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D.

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

#### 95.302 Powers

The guaranty credit union, pursuant to Texas Finance Code §15.410(b) and to the powers contained in Subtitle D, Title 3, Texas Finance Code, may:

(1) – (15) (No change.)

(16) Acquire a promissory note or other asset upon which a nonmember is liable, provided such acquisition is made, in the discretion of the guaranty credit union, to protect an inferior lien held by the guaranty credit union, a participating credit union, member of the guaranty credit union or a member of a participating credit union member of the guaranty credit union. Such acquisitions shall not be subject to the restrictions of §91.701 et. seq. of this title (relating to Lending Powers [~~Loans~~]);

(17) – (18) (No change.)

#### 95.305 Audited Financial Statements; Accounting Procedures; Reports

(a) – (c) (No change.)

(d) All of the provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Call Reports and Other Information Requests [~~Reports and Charges for Late Filing~~]).

#### 95.310 Fees and Charges

(a) A guaranty credit union shall pay the fees prescribed in §97.113 of this title (relating to [~~Operating~~] Fees and Charges) in the same manner as any other credit union chartered under the Act.

(b) (No change.)

### 3. Rulemaking Matters

#### c. Recommend to the Commission proposed repeal of 7 TAC Section 95.109, Fees and Charges

##### Background

This repeal is the result of the Department's rule review process. The repeal is being recommended in conjunction with the recommendation to add its provisions to Section 95.108, which contains similar provisions regarding examinations of insuring organizations.

##### Staff recommendation

Recommend that the Commission propose the repeal.

##### Recommended motion

I move that the Committee recommend that the Commission propose the repeal of 7 TAC Section 95.109.

The Credit Union Commission proposes the repeal of 7 TAC §95.109, Fees and Charges.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The repeal of this section is proposed in order to combine the provisions of this section with §95.108, Examinations, being proposed for amendment elsewhere in this issue so that provisions regarding examinations of insuring organizations and the fees associated with those examinations will be in a single rule.

**COST TO REGULATED PERSONS.** This proposed repeal 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 proposed repeal 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 repeal 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.** Robert Etheridge, Commissioner, has determined that for the first five-year period the proposed repeal is 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 this proposed repeal.

**PUBLIC BENEFIT/COST NOTE.** Mr. Etheridge has determined, pursuant to Government Code §2001.024(a)(5), that for the first five-year period the proposed repeal is in effect, the public benefit is clarity. He has further determined there will be no probable economic cost to the credit union system or to persons required to comply with the proposed repeal.

**IMPACT ON LOCAL EMPLOYMENT OR ECONOMY.** There is no reasonably anticipated effect on a local economy for the first five years that the proposed repeal is 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. Etheridge has also determined that for each year of the first five years the proposed repeal 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 proposal does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The Department is requesting public comments on the proposed repeal and information related to the cost, benefit, or effect thereof, including any applicable data, research, or analysis, from any person required to comply with the proposed repeal or any other interested person. Please include an explanation of how and why the submitted information is specific to the proposed repeal. 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 repeal is proposed pursuant to Texas Finance Code §15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D.

STATUTORY SECTIONS AFFECTED. The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 15 and Title 3, Subtitle D.

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

#### ~~[95.109 Fees and Charges~~

~~(a) An insuring organization shall pay the cost associated with an examination of a foreign credit union as prescribed in §97.113(k) of this title (relating to Foreign Credit Union Examination Fees).~~

~~(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the insuring organization.]~~

### 3. Rulemaking Matters

d. Recommend to the Commission adoption of rule review and readoption of rules:

i. 7 TAC Chapter 91, Subchapter G

ii. 7 TAC Chapter 95, Subchapters A-D

#### Background

Section 2001.039 of the Government Code requires state agencies to 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 thereafter. The review must address an assessment of whether the reason for adopting each rule continues to exist. At its March 22, 2024, meeting, the Commission approved a plan that established a schedule for the review of each section of the rules. In accordance with that plan, staff has reviewed the above-referenced subchapters, believes the amendments addressed previously in this agenda are appropriate and necessary, and that the remainder of the rules within these subchapters should be readopted in accordance with Section 2001.039 of the Government Code.

Notice of the review and a request for comments on the rules in these subchapters were published in the January 23, 2026, issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting these rules continue to exist.

#### Staff recommendation

Recommend that the Commission find 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 Chapter 91, Subchapter G; and Chapter 95 continue to exist and readopt the rules in these subchapters.

**Title 7**

**Part VI. Credit Union Department**

**Chapter 91**

**CHARTERING, OPERATIONS, MERGERS,  
LIQUIDATIONS**

## Subchapter G. Lending Powers

### §91.701. Lending Powers.

(a) Authorization. A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Written Policies. Before engaging in any lending activity, each credit union shall establish written lending policies that set prudent credit underwriting and documentation standards for each specific type of lending activity. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

- (1) Be consistent with safe and sound credit union practices;
- (2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;
- (3) Be compatible with the size and expertise of the credit union's lending staff;
- (4) Be compliant with all related laws and regulations;
- (5) Be reviewed and approved by the credit union's board of directors at inception and annually, thereafter;
- (6) Address loan portfolio diversification standards to avoid undue concentrations of risk;
- (7) Address loan documentation and underwriting standards that are clear and measurable;
- (8) Address loan administration procedures for monitoring the loss exposure from the loan portfolio;
- (9) Address loan pricing guidelines to ensure that the rate of return is consistent with the risk from the lending activity; and
- (10) State the lending authority delegated to any individuals or committees by the board of directors.

(c) Loan Documentation. The lending policies shall include loan documentation practices that:

- (1) Enable the credit union to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; and
- (3) Ensure that any claim against a member is legally enforceable.

(d) Credit Underwriting. A credit union shall establish and maintain prudent credit underwriting practices that:

- (1) Are commensurate with the types of loans the credit union will make and consider the terms and conditions under which they will be made;
- (2) Consider the nature of the markets in which loans will be made;
- (3) Provide for consideration of the member's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the member's character and willingness to repay as agreed;
- (4) Take adequate account of concentration of credit risk; and
- (5) Are appropriate to the size of the credit union and the nature and scope of its activities.

(e) Loan Maturity Limit. Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of any loan or extension of credit to a member may not exceed 15 years. Minimum payments, on a line of credit balance must be sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization.

(f) Liquidity. In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(g) Waivers. The commissioner in the exercise of discretion may grant a waiver in writing of any lending requirement described in this chapter. A decision to deny a waiver, however, is not subject to appeal. A waiver request must contain the following:

- (1) The requirement to be waived, the higher limit or the ratio sought;
- (2) An explanation of the need for the waiver or to raise the limit or ratio; and
- (3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

*Source: The provisions of this §91.701 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6266; amended to be effective March 14, 2004, 29 TexReg 2637; amended to be effective November 9, 2006, 31 TexReg 9017; reviewed and amended to be effective November 7, 2010, 35 TexReg 9716; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.703. Interest Rates.**

(a) Loans made by each credit union shall bear interest at a rate or rates as may be determined by the credit union's board of directors. A board may delegate all or part of its power to determine the interest rates on any lending transactions. The board may also authorize a refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

*Source: The provisions of this §91.703 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and amended to be effective November 7, 2010, 35 TexReg 9717; reviewed and readopted to be effective June 23, 2014, 38 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.704. Real Estate Lending.**

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) Home loan means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Finance Code <\*>347.002, used or to be used as the borrower's principal residence; or

- (ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.

(4) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(6) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:

- (1) Title insurance;
- (2) Escrow administration;
- (3) Loan payoffs;
- (4) Collection and foreclosure; and
- (5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish its own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

- (A) Unimproved land held for investment/speculation--Loan to value limit 60%
- (B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%
- (C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%
- (D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%
- (E) Other residential real estate such as a second or vacation home--Loan to value limit 90%
- (F) Home equity--Loan to value limit 80%
- (G) All Other--Loan to value limit 80%

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the outstanding balances, plus any unfunded commitment or line of credit from all sources on an item of collateral, divided by the market value of the collateral used to secure the loan.

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, credit unions engaged in real estate lending are expected to have loan policies that establish prudent standards for loan structure including tenor and amortization that are within the risk parameters approved by the board of directors and consistent with the following regulatory limits:

- (1) Improved residential real estate loans (principal residence, first lien)--40 years
- (2) Improved residential real estate loans (secondary residence, first lien)--30 years
- (3) Improved residential real estate loans (investment property, first lien)--20 years
- (4) Interim construction loans--18 months
- (5) Manufactured home (first lien)--20 years
- (6) Home equity loans--20 years (second lien)--30 years (first lien)
- (7) Home improvement loans--20 years
- (8) A loan secured in part, by the insurance or guarantee of, or with an advance

commitment to purchase the loan, in full or in part, by the Federal Government or any agency of the Federal Government, may be made for the maturity specified in the law, regulations or program under which the insurance, guarantee or commitment is provided

(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan. "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

(1) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories: Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.

(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.

(f) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

(g) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

*Source: The provisions of this §91.704 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9018; amended to be effective March 2, 2008, 33 TexReg 1515; amended to be effective March 4, 2009, 34 TexReg 1399; reviewed and amended to be effective November 7, 2010, 35 TexReg 9718; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.705. Home Improvement Loans.**

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

*Source: The provisions of this §91.705 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.706. Home Equity Loans.**

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

*Source: The provisions of this §91.706 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.707. Reverse Mortgages.**

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

*Source: The provisions of this §91.707 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.708. Real Estate Appraisals or Evaluations.**

- (a) **Policies and Procedures.** A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.
- (b) **Loans Over \$400,000.** For real estate loans in which the loan amount or extension of credit exceeds \$400,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.
- (c) **Loans \$400,000 or Less.** For real estate loans with a loan amount or extension of credit of \$400,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral that is supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations or from tax appraisal data of a governmental entity.
- (d) **Right to Require an Appraisal.** The commissioner may require an appraisal under this section, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the collateral is overstated.
- (e) **Existing Loans.** In the case of renewal of a loan where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of additional funds, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.
- (f) **Other Appraisal Requirements.** A credit union shall also comply with applicable real estate appraisal requirements contained within Part 722 of the National Credit Union Administration Rules and Regulations.

*Source: The provisions of this §91.708 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 11, 2002, 27 TexReg 6834; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9018; reviewed and amended to be effective November 7, 2010, 35 TexReg 9720; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and amended to be effective August 30, 2020, 45 TexReg 5906; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.709. Member Business and Commercial Loans.**

(a) Definitions. Definitions in TEX. FIN. CODE §121.002, are incorporated herein by reference. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) “Borrower” means a member or any other person named as a borrower, obligor, or debtor in a loan or extension of credit; or any other person, including, but not limited to, a comaker, drawer, endorser, guarantor or surety who is considered to be a borrower under the requirements of subsection (i) of this section concerning aggregation and attribution for commercial loans.

(2) “Commercial loan” means a loan or an extension of credit to an individual, sole proprietorship, partnership, corporation, or business enterprise for commercial, industrial, agricultural, or professional purposes, including construction and development loans, any unfunded commitments, and any interest a credit union obtains in such loans made by another lender. A commercial loan does not include a loan made for personal expenditure purposes; a loan made by a corporate credit union; a loan made by a credit union to a federally insured credit union; a loan made by a credit union to a credit union service organization; a loan secured by a 1- to 4-family residential property (whether or not the residential property is the borrower’s primary residence); a loan fully secured by shares in the credit union making the extension of credit or deposits in another financial institution; a loan secured by a vehicle manufactured for household use; and a loan that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balance plus unfunded commitments less any portion secured by shares in the credit union to a borrower, is equal to less than \$50,000.

(3) “Control” means a person directly or indirectly, or acting through or together with one or more persons who:

(A) own, control, or have the power to vote twenty-five (25) percent or more of any class of voting securities of another person;

(B) control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) have the power to exercise a controlling influence over the management or policies of another person.

(4) “Immediate family member” means a spouse or other family member living in the same household.

(5) “Loan secured by a lien on a 1- to 4-family residential property” means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(6) “Loan secured by a lien on a vehicle manufactured for household use” means a loan that, at origination, is secured wholly or substantially by a lien on a new and used passenger car or other vehicle such as a minivan, sport-utility vehicle, pickup truck, and similar light truck or heavy-duty truck generally manufactured for personal, family, or household use and not used as a fleet vehicle or to carry fare-paying passengers, for which the lien is central to the extension of credit. A lien is central to the extension of credit if the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan wholly or substantially secured by a lien on a vehicle manufactured for household use if the estimated value of the collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(7) “Loan-to-value ratio for collateral” means the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union’s lien, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements.

(8) “Member business loan” has the meaning assigned by 12 C.F.R. Part 723.

(9) “Net worth” has the meaning assigned by 12 C.F.R. Part 702.2.

(10) “Readily marketable collateral” means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(11) “Residential property” means a house, townhouse, condominium unit, cooperative unit, manufactured home, a combination of a home or dwelling unit and a business property that involves only minor or incidental business use, real property to be improved by the construction of such structures, or unimproved land zoned for 1- to 4-family residential use but does not include a boat, motor home, or timeshare property, even if used as a primary residence. This applies to such structure whether under construction or completed.

(b) Parity. A credit union may make, commit to make, purchase, or commit to purchase any member business loan it could make if it were operating as a federal credit union domiciled in this state, so long as for each transaction the credit union complies with all applicable regulations governing such activities by federal credit unions. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

(c) Commercial Loan Responsibilities and Operational Requirements. Prior to engaging in the business of making commercial loans, a credit union must address the responsibilities and operational requirements under this subsection:

(1) Written policies. A credit union must establish comprehensive written commercial loan policies approved by its board of directors instituting prudent loan approval, credit underwriting, loan documentation, and loan monitoring standards in accordance with this paragraph. The board must review its policies at least annually and, additionally, prior to any material change in the credit union’s commercial lending program or related organizational structure, in response to any material change in the credit union’s overall portfolio performance, or in response to any material change in economic conditions affecting the credit union. The board must update its policies when warranted. Policies under this paragraph must be designed to identify:

(A) type(s) of commercial loans permitted;

(B) trade area;

(C) the maximum amount of assets, in relation to net worth, allowed in secured, unsecured, and unguaranteed commercial loans and in any given category or type of commercial

loan and to any one borrower;

(D) credit underwriting standards including potential safety and soundness concerns to ensure that action is taken to address those concerns before they pose a risk to the credit union's net worth; the size and complexity of the loan as appropriate to the size of the credit union; the scope of the credit union's commercial loan activities; the level and depth of financial analysis necessary to evaluate financial trends and the condition of the borrower and the ability of the borrower to meet debt service requirements; requirements for a borrower-prepared projection when historic performance does not support projected debt payments; the financial statement quality and degree of verification sufficient to support an accurate financial analysis and risk assessment; the methods to be used in evaluating collateral authorized, including loan-to-value ratio limits; the means to secure various types of collateral; and other risk assessment analyses including analysis of the impact of current market conditions on the borrower.

(E) loan approval standards including consideration, prior to credit commitment, of the borrower's overall financial condition and resources; the financial stability of any guarantor; the nature and value of underlying collateral; environmental assessment requirements; the borrower's character and willingness to repay as agreed; the use of loan covenants when warranted; and the levels of loan approval authority commensurate with the proficiency of the individuals or committee of the credit union tasked with such approval authority in evaluating and understanding commercial loan risk, when considered in terms of the level of risk the borrowing relationship poses to the credit union;

(F) loan monitoring standards including a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; the concentration of credit risk; and the risk management systems under subsection (d) of this section; and

(G) loan documentation standards including enabling the credit union to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identifying the purpose of each loan and source(s) of repayment; assessing the ability of each borrower to repay the indebtedness in a timely manner; ensuring that any claim against a borrower is legally enforceable; and demonstrating appropriate administration and monitoring of each loan.

(2) Qualified Staff. A credit union must ensure that it is appropriately staffed with qualified personnel with relevant and necessary expertise and experience for the types of commercial lending in which the credit union is engaged, including appropriate experience in underwriting, processing, overseeing and evaluating the performance of a commercial loan portfolio, including rating and quantifying risk through a credit risk rating system and collections and loss mitigation activities for the types of commercial lending in which the credit union is engaged. At a minimum, a credit union making, purchasing, or holding any commercial loans must internally have a senior management employee that has a thorough understanding of the role of commercial lending in the credit union's overall business model and establish risk management processes and controls necessary to safely conduct commercial lending as provided by subsection (d) of this section.

(3) Use of Third-Party Experience. A third party may provide the requisite expertise and experience necessary for a credit union to safely conduct commercial lending if:

(A) the third party has no affiliation or contractual relationship with the borrower;

(B) the third party is independent from the commercial loan transaction and does not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:

(i) the third party may provide a service to the credit union that is

related to the transaction, such as loan servicing;

(ii) the third party may provide the requisite experience to a credit union and purchase a loan or a participation interest in a loan originated by the credit union that the third party reviewed; and

(iii) the third party is a credit union service organization and the credit union has a controlling financial interest in the credit union service organization as determined under generally accepted accounting principles.

(C) the actual decision to grant a commercial loan resides with the credit union; and

(D) qualified credit union staff exercise ongoing oversight over the third party by regularly evaluating the quality of any work the third party performs for the credit union.

(4) De Minimis Exception. The responsibilities and operational requirements described in paragraphs (1) and (2) of this subsection do not apply to a credit union if it meets all of the following conditions:

(A) the credit union's total assets are less than \$250 million;

(B) the credit union's aggregate amount of outstanding commercial loan balances (including any unfunded commitments, any outstanding commercial loan balances and unfunded commitments of participations sold, and any outstanding commercial loan balances and unfunded commitments sold and serviced by the credit union) total less than fifteen (15) percent of the credit union's net worth; and

(C) in a given calendar year, the amount of originated and sold commercial loans and the amount of originated and sold commercial loans the credit union does not continue to service, total fifteen (15) percent or less of the credit union's net worth.

(D) A credit union that relies on this de minimis exception is prohibited from engaging in any acts or practices that have the effect of evading the requirements of this subsection.

(d) Commercial Loan Risk Management Systems.

(1) Risk Management Processes. A credit union's risk management process must be commensurate with the size, scope and complexity of the credit union's commercial lending activities and borrowing relationships. The processes must, at a minimum, address the following:

(A) use of loan covenants, if appropriate, including frequency of borrower and guarantor financial reporting;

(B) periodic loan review, consistent with loan covenants and sufficient to conduct portfolio risk management, which, based upon current market conditions and trends, loan risk, and collateral conditions, must include a periodic reevaluation of the value and marketability of any collateral, and an updated loan-to-value ratio for collateral calculation;

(C) a credit risk rating system under paragraph (2) of this subsection; and

(D) a process to identify, report, and monitor commercial loans that are approved by the credit union as exceptions to the credit union's loan policies.

(2) Credit Risk Rating System. The credit risk rating system must be a formal process that identifies and assigns a relative credit risk rating to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score must be determined through an evaluation of quantitative factors based on the financial performance of each commercial loan and qualitative factors based on the credit union's management, operational, market, and business environment factors. A credit risk rating must be assigned to each commercial loan at the inception of the loan. A credit risk rating must be reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles.

(3) Independent Review. Periodic independent reviews should be conducted by a person

who is both qualified to conduct such a review and independent of the function being reviewed. The review should provide an objective assessment of the overall commercial loan portfolio quality and verify the accuracy of ratings and the operational effectiveness of the credit union's risk management processes. A credit union is not required to hire an outside third party to conduct this independent review, if it can be done in-house by a competent person that is considered unconnected to the function being reviewed.

(e) Collateral and Security for Commercial Loans.

(1) Collateral. A commercial loan must be secured by collateral commensurate with the level of risk associated with the size and type of the commercial loan. The collateral must be sufficient to ensure the credit union is protected by a prudent loan-to-value ratio for collateral along with appropriate risk sharing with the borrower and principal(s). A credit union making an unsecured commercial loan must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk of making an unsecured loan.

(2) Personal Guarantees. A credit union that does not require the full and unconditional personal guarantee from all principals of the borrower who have a controlling interest, as defined by subsection (a)(3) of this section, in the borrower must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

(f) Construction and Development Loans.

(1) Terms. In this subsection:

(A) "construction or development loan" means any financing arrangement to enable the borrower to acquire property or rights to property, including land or structures, with the intent to construct or renovate an income producing property, such as residential housing for rental or sale, or a commercial building, that may be used for commercial, agricultural, industrial, or other similar purposes. It also means a financing arrangement for the construction, major expansion or renovation of the property types referenced in this subsection. The collateral valuation for securing a construction or development loan depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed. A loan to finance maintenance, repairs, or other improvements to an existing income-producing property that does not change the property's use or does not materially impact the property is not a construction or development loan.

(B) "cost to complete" means the sum of all qualifying costs necessary to complete a construction project and documented in an approved construction budget. Qualifying costs generally include on- or off-site improvements; building construction; other reasonable and customary costs paid to construct or improve a project, including a general contractor's fees; other expenses normally included in a construction contract such as bonding and contractor insurance; the value of the land, determined as the sum of the cost of any improvements to the land and the lesser of appraised market value or purchase price; interest as provided by this subparagraph; project costs as provided by this subparagraph; a contingency account to fund unanticipated overruns; and other development costs such as fees and related pre-development expenses. Interest expense is a qualifying cost only to the extent it is included in the construction budget and is calculated based on the projected changes in the loan balance up to the expected "as-complete" date for owner-occupied non-income-producing commercial real property or the "as stabilized" date for income-producing real estate. Project costs for related parties, such as developer fees, leasing expenses, brokerage commissions and management fees, are included in qualifying costs only if reasonable in comparison to the cost of similar services from a third party. Qualifying costs exclude interest or preferred returns payable to equity partners or subordinated debt holders, the developer's general corporate overhead, and selling costs to be funded out of sales proceeds such as brokerage commissions and other closing costs.

(C) “prospective market value” means the market value opinion determined by an independent appraiser in compliance with the relevant standards set forth in the Uniform Standards of Professional Appraisal Practice. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two (2) prospective value opinions may be required to reflect the time frame during which development, construction, or occupancy occur. The prospective market value “as-completed” reflects the real property’s market value as of the time that development is to be completed. The prospective market value “as-stabilized” reflects the real property’s market value as of the time the real property is projected to achieve stabilized occupancy. For an income producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the real property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar real properties.

(2) Policies. A credit union that elects to make a construction or development loan must ensure that its commercial loan policies under subsection (c) of this section meets the following conditions:

(A) qualified personnel representing the interest of the credit union must conduct a review and approval of any line item construction budget prior to closing the loan;

(B) a requisition and loan disbursement process approved by the credit union is established;

(C) release or disbursement of loan funds occurs only after on-site inspections which are documented in a written report by qualified personnel who represents the interest of the credit union and certifies that the work requisitioned for payment has been satisfactorily completed, and the remaining funds available to be disbursed from the construction and development loan is sufficient to complete the project; and

(D) each loan disbursement is subject to confirmation that no intervening liens have been filed.

(3) Establishing Collateral Values. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements. The collateral value depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed and is the lesser of the project’s cost to complete or its prospective market value.

(4) Controls and Processes for Loan Advances. A credit union that elects to make a construction and development loan must have effective commercial loan control procedures in place to ensure sound loan advances and that liens are paid and released in a timely manner. Effective controls should include segregation of duties, delegation of duties to appropriate qualified personnel, and dual approval of loan disbursements.

(g) Commercial Loan Prohibitions.

(1) Ineligible borrowers. A credit union may not grant a commercial loan to the following:

(A) any senior management employee directly or indirectly involved in the credit union’s commercial loan underwriting, servicing, and collection process, and any of their immediate family members;

(B) any person meeting the requirements of subsection (i) of this section concerning aggregations and attribution for commercial loans, with respect to persons identified in subparagraph (A) of this paragraph; or

(C) any director, unless the credit union’s board of directors approves granting the loan and the borrowing director was recused from the board’s decision making process.

(2) Equity Agreements and Joint Ventures. A credit union may not grant a commercial loan if any additional income received by the credit union or its senior management employees is

ted to the profit or sale of any business or commercial endeavor that benefits from the proceeds of the loan.

(3) Fees. No director, committee member, volunteer official, or senior management employee of a credit union, or immediate family member of such director, committee member, volunteer official, or senior management employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any commercial loan made by the credit union. Employees, other than senior management, may be partially compensated on a commission or performance based incentive, provided the compensation is governed by a written policy and internal controls established by the board of directors. The board must review the policies and controls at least annually to ensure that such compensation is not excessive or expose the credit union to inappropriate risks that could lead to material financial loss. Loan origination employees are prohibited from receiving, in connection with any commercial loan made by the credit union, any compensation from any source other than the credit union. For the purposes of this paragraph, compensation includes non-monetary items and anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest, but compensation does not include nonmonetary items of nominal value.

(h) Aggregate Member Business Loan Limit.

(1) Limits. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under 12 U.S.C. Section 1790d(c)(1)(A). For purposes of this calculation, member business loan means any commercial loan, except that the following commercial loans are not member business loans and are not counted toward the aggregate limit on member business loans:

(A) any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase the loan in full;

(B) any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the credit union acquired the non-member loans or participation interest in compliance with applicable laws and the credit union is not, in conjunction with one or more other credit unions, trading member business loans to circumvent the aggregate limit under this subsection; and

(C) any loan that is fully secured by a lien on a 1- to 4- family dwelling.

(2) Exceptions. Any loan secured by a lien on a vehicle manufactured for household use that will be used for commercial, corporate, or other business investment property or venture, and any other loan for an agricultural purpose are not commercial loans (if the outstanding aggregate net member business loan balance is \$50,000 or greater), and must be counted toward the aggregate limit on a credit union's member business loans under this subsection.

(3) Exemption. A credit union that has a federal low-income designation, or participates in the federal Community Development Financial Institution program, or was chartered for the purpose of making member business loans, or which as of the date of the Credit Union Membership Access Act of 1998 had a history of primarily making commercial loans, is exempt from compliance with the aggregate member business loan limits in paragraph (1) of this subsection.

(4) Method of Calculation for Net Member Business Loan Balance. For the purposes of NCUA form 5300 reporting (call report), a credit union's net member business loan balance is determined by calculating the sum of the outstanding loan balance plus any unfunded commitments and reducing that sum by any portion of the loan that is: secured by shares in the credit union, by shares or deposits in other financial institutions, or by a lien on a borrower's primary residence; insured or guaranteed by any agency of the federal government, a state, or any

political subdivision of a state; or subject to an advance commitment to purchase by any agency of the federal government, a state, or any political subdivision of a state; or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(i) Aggregation and Attribution for Commercial Loans.

(1) General Rule. A commercial loan or extension of credit to one borrower is attributed to another person, and each person will be considered a borrower, when:

(A) the proceeds of the commercial loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, as provided by paragraph (2) of this subsection;

(B) a common enterprise is deemed to exist between the persons as persons as provided by paragraph (3) of this subsection; or

(C) the expected source of repayment for each commercial loan or extension of credit is the same for each person as provided by paragraph (3) of this subsection.

(2) Direct Benefit. The proceeds of a commercial loan or extension of credit to a borrower is considered used for the direct benefit of another person and attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred in any manner to or for the benefit of the other person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services from such other person.

(3) Common Enterprise.

(A) Description. A common enterprise is considered to exist and commercial loans to separate borrowers will be aggregated when:

(i) the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this subparagraph because of wages and salaries paid to an employee, unless the standards of clause (ii) of this subparagraph are met:

(ii) the loans or extension of credit are made:

(I) to borrowers who are related directly or indirectly through control as defined by subsection (a) of this section; and

(II) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and other similar receipts or payments;

(iii) separate persons borrow from a credit union to acquire a business of enterprise of which those borrowers will own more than fifty (50) percent of the voting securities of voting interest, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) the Department determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(B) Commercial Loans to Certain Entities. A commercial loan or extension of credit:

(i) to a partnership or joint venture is considered to be a commercial loan or extension of credit to each member of the partnership or joint venture. Excepted from this subdivision is a partner or member who: is not held generally liable, by the terms of the partnership or membership agreement or by applicable law, for the debts or actions of the partnership, joint

venture, or association, provided those terms are valid against third parties under applicable law; and has not otherwise agreed to guarantee or be personally liable on the loan or extension of credit.

(ii) to a member of a partnership, joint venture, or association is generally not attributed to the partnership, joint venture, or associations, or to other members of the partnership, joint venture, or association, except as otherwise provided by paragraphs (2) and (3) of this subsection, provided that a commercial loan or extension of credit made to a member of a partnership, joint venture or association for the purpose of purchasing an interest in the partnership, joint venture or association, is attributed to the partnership, joint venture or association.

(C) Guarantors and Accommodation Parties. The derivative obligation of a drawer, endorser, or guarantor of a commercial loan or extension of credit, including a contingent obligation to purchase collateral that secures a commercial loan, is aggregated with other direct commercial loans or extensions of credit to such a drawer, endorser, or guarantor.

(j) Commercial Loans to One Borrower Limit. The total aggregate dollar amount of commercial loans by a credit union to any borrower at one time may not exceed the greater of fifteen (15) percent of the credit union's net worth or \$100,000, plus an additional ten (10) percent of the credit union's net worth if the amount that exceeds the credit union's fifteen (15) percent general limit is fully secured at all times with a perfected security interest in readily marketable collateral. Any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the commercial loan in full, is excluded from this limit.

(k) Finance Code Limitation. In addition to the other limitations of this section, a credit union may not make a loan to a member or a business interest of the member if the loan would cause the aggregate amount of loans to the member and the member's business interests to exceed an amount equal to 10 percent of the credit union's total assets as provided by TEX. FIN. CODE §124.003.

(l) Commercial Loans Regarding Federal or State Guaranteed Loan Programs. A credit union may follow the loan requirements and limits of a guaranteed loan program for loans that are part of a loan program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the loan in full if that program has requirements that are less restrictive than those required by this section.

(m) Transitional Provisions.

(1) Waivers. Upon the effective date of this section, any waiver approved by the Department concerning a credit union's commercial lending activity is rendered moot, except for waivers granted for the commercial loan to one borrower limit. Borrowing relationships granted by waivers will be grandfathered however, the debt associated with those relationships may not be increased.

(2) Administrative Constraints. Limitations or other conditions imposed on a credit union in any written directive from the Department are unaffected by the adoption of this section. As of the effective date of this section, all such limitations or other conditions remain in place until such time as they are modified by the Department.

*Source: The provisions of this §91.709 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective February 23, 2003, 28 TexReg 1377; amended to be effective on March 6, 2005, 30 TexReg 1065; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; amended to be effective on January 1, 2017, 41 TexReg 9099; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and amended to be effective November 5, 2018, 43 TexReg 7343; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.710. Overdraft Protection.**

(a) **Written Policy.** A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has written policies and procedures adequate to address the credit, operational, and other risks associated with this type of program. The policy must:

1. Set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses;
  2. Establish a time limit no later than 60 calendar days from the date first overdrawn to charge off the overdraft balance if the member does not repay the overdraft balance, or does not obtain an approved loan from the credit union;
  3. Limit the dollar amount of overdrafts the credit union will honor per account;
  4. Institute prudent practices related to suspension of overdraft protection services;
- and
5. Establish the fee, if any, the credit union will charge members for honoring overdrafts.

(b) **Safety and Soundness Requirements.** A credit union must manage the risks associated with an overdraft protection program in accordance with safe and sound credit union principles. Accordingly, a credit union must establish and maintain effective risk management and control processes over its program. Such processes include appropriate recognition, treatment, and financial reporting, in accordance with generally accepted accounting principles, of income, expenses, assets, liabilities, and all expected and unexpected losses associated with the program. A credit union also shall assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its overdraft protection program.

(c) **Communications with Member.** A credit union shall carefully review its overdraft protection program to ensure that marketing and other communications concerning the program do not mislead members to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed. In addition, a credit union shall take reasonable precautions to make sure members are not misled about the correct amount of their account balance, or the costs or scope of the overdraft protection offered, and that it does not encourage irresponsible member financial behavior that potentially may increase risk to the credit union.

(d) **Other Requirements.** A credit union shall also comply with the overdraft service requirements contained within Part 205 of the Federal Reserve System Rules and Regulations (Regulation E).

*Source: The provisions of this §91.710 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9019; reviewed and amended to be effective November 7, 2010, 35 TexReg 9720; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.711. Purchase and Sale of Member Loans.**

(a) **Policies.** A credit union may sell or purchase all or part of a participation interest in a member loan or pool of member loans in accordance with written policies adopted by the board of directors that address the following matters:

- (1) The type of entities to which the credit union is authorized to sell participation interests in member loans;
- (2) The types of member loans in which the credit union may purchase or sell a participation interest and the types of participation interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of participation interests in member loans;

(4) Limitations on the aggregate principal amount of participation interest in member loans that the credit union may purchase from a single entity as necessary to diversify risk, and limitations on the aggregate amount the credit union may purchase from all entities;

(5) Provision for the identification and reporting of member loans in which participation interests are sold or purchased; and

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent judgment.

(b) Purchase and Sale Agreements. The sale or purchase of a member loan or participation interest must be based on a written agreement between the parties. Agreements to purchase or sell a member loan or a participation interest shall, at a minimum:

(1) Identify the particular member loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the participation interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the member loan and the protection of the participation interests of the credit union.

(c) Member Loan Servicing. A credit union may sell to or purchase from any participant the servicing of any member loan in which it owns a participation interest. If a party other than the credit union will be servicing the member loan(s), the credit union shall ensure that all contracts require the servicer to administer the member loan(s) in accordance with prudent industry standards, and provide for a possible change of the servicer if performance is inadequate.

(d) Definition. For purposes of this section, a member loan means a loan or extension of credit where the borrower(s) is a member of the credit union or a member of another participating credit union.

(e) Independent Credit Judgment. A credit union that purchases a participation interest in a member loan has the responsibility of conducting member loan underwriting procedures on the member loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards. The credit union shall make a judgment on the creditworthiness of the borrower that is independent of the originating lender and any intermediary seller prior to the purchase of the participation interest and prior to any servicing action that alters the terms of the original agreement. This credit judgment may not be delegated to any person that is not an employee or independent agent of the credit union. A credit union that purchases a participation interest in a member loan may use information, such as appraisals or collateral inspections, furnished by the originating lender, or any intermediary seller; however, the purchasing credit union shall independently evaluate such information when exercising its independent credit judgment. The independent credit judgment shall be documented by a credit analysis that considers the underwriting, documentation, and compliance standards that would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer.

(f) Other Requirements. A credit union purchasing a participation interest in a member loan from a lender that is not a credit union insured by the National Credit Union Share Insurance Fund, must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

(g) Sales with Recourse. When a member loan or participation interest is sold with recourse, it shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s).

*Source: The provisions of this §91.711 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6268; amended to be effective November 9, 2006, 31 TexReg 9019; reviewed and amended to be effective November 7, 2010, 35 TexReg 9720; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

## **§91.712. Plastic Cards.**

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

(1) Card Activation – process of sending new plastic cards from the issuer to the legitimate cardholder in an “inactive” mode and making the card usable. Upon receiving the card, the legitimate cardholder must call or log on to the issuer/processor’s website and go through a member verification process before the card is “activated”.

(2) Card Security Code – a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.

(3) Neural Network – a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity.

(4) Plastic Cards – includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.

(b) Credit cards. A credit union may issue credit cards in accordance with the credit union’s written policies, which shall include at a minimum:

(1) Credit policies to set individual limits for credit card accounts;

(2) A process for reviewing each member’s payment and/or credit history periodically for the purpose of determining risk; and

(3) The credit underwriting standards for each type of card program offered.

(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

(A) The amount of losses caused by theft and fraud;

(B) The loss prevention measures (and their adequacy) currently employed by the credit union;

(C) The availability and possible implementation of other loss prevention measures such as card activation, card security codes, neural networks, and other evolving technology; and

(D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

(2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

*Source: The provisions of this §91.712 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6268; amended to be effective November 9, 2006, 31, TexReg 9020; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4955; reviewed and amended to be effective November 5, 2018, 43 TexReg 7343; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.713. Indirect Lending.**

- (a) Indirect Lending Program. Credit unions may implement a program of indirect financing of motor vehicles and other tangible personal property. As used in this chapter, an indirect financing is the credit union's purchase of a member's retail installment contract that is originated by a seller to finance the purchase of the motor vehicle or other property.
- (b) Contracts Treated as a Loan. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting decision. The seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, but the final determination of membership eligibility is the credit union's responsibility.
- (c) Authorization. Credit unions may purchase or hold retail installment contracts when authorized by applicable law. The retail installment contract must provide for a rate or amount of time price differential that does not exceed a rate or amount authorized by applicable law.
- (d) Written Policies. The board of directors shall establish, implement, and maintain prudent and reasonable written policies that are appropriate for the size and complexity of the credit union's indirect lending program. The board must also ensure that the credit union has sufficient staff with the expertise to purchase, service, and monitor the program and the contract portfolio consistent with safe and sound credit union practices. The policies must be specific and detailed enough to foster prudent and compliant credit practices.
- (e) Third Party Providers. A credit union may rely on services provided by third parties to support its indirect lending activities. The board of directors must ensure that the credit union exercises appropriate due diligence before entering into third party arrangements, and maintains effective oversight and control throughout the arrangement. This oversight and control should include a periodic review of each material seller's retail installment contract statistics to ensure compliance with credit union credit criteria and to avoid undue concentrations of risk.
- (f) Subprime Indirect Lending. If a credit union conducts a program that includes subprime indirect lending, it must perform comprehensive due diligence before engaging in and during that type of activity. At a minimum, due diligence shall focus on understanding the higher levels of credit, compliance, reputation, and other risks involved, plus the likelihood that origination, servicing, collections, operating, and capital costs will increase. The strategic decision to engage in subprime indirect lending must also be supported by a sound business plan that establishes measurable financial objectives as well as limitations on growth, volume, and concentrations. For the purposes of this section, "subprime indirect lending" refers to programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios.

*Source: The provisions of this §91.713 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6268; amended to be effective November 12, 2006, 31 TexReg 9020; reviewed and amended to be effective November 7, 2010, 35 TexReg 9721; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.714. Leasing.**

- (a) Definitions. For the purposes of this section:

(1) The term net lease means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for:

(A) the servicing, repair or maintenance of leased property during the lease term;

(B) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of subsection (c)(2)(A) of this section;

(C) the loan of replacement or substitute property while the leased property is being serviced;

(D) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) the renewal of any license, registration, or filing for the property unless such action by the credit union is necessary to protect its interest as an owner or financier of the property.

(2) The term full-payout lease means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the credit union to yield the return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term realization of investment means that a credit union that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals; and

(B) The estimated residual value of the property at the expiration of the term of the lease.

(b) Permissible Activities. Subject to the limitations of this section, a credit union may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) Finance Leasing.

(1) A credit union may conduct leasing activities that are functional equivalent of loans made under those leases. Such financing leases are subject to the same restrictions that would be applicable to a loan.

(2) To qualify as the functional equivalent of a loan:

(A) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(B) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(C) At the termination of the financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or the value carried on the credit union's books.

(d) **General Leasing.** A credit union may invest in tangible personal property, including vehicles, manufactured homes, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) **Leasing Salvage Powers.** If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (1) and (2) of this subsection.

(f) **Written Policies.** A credit union engaged in lease underwriting must adopt written policies and develop procedures that reflect lease practices that control risk and comply with applicable laws. Any leasing activity must be consistent with the lending policies and underwriting requirements in §91.701 of this title (relating to Lending Powers). Any credit union engaged in making or buying leases also must adopt written policies and procedures that address the additional risks associated with leasing.

(g) **Insurance Requirements.** A credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if the credit union does not own the leased property. Contingent liability insurance protects the credit union if it is sued as the owner of the leased property. A credit union must use an insurance company with a nationally recognized industry rating of at least a B+. Credit union members must still carry the normal liability and property insurance on the leased property and the credit union must be named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.

(h) **Holding Period.** At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a credit union shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. The credit union must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

*Source: The provisions of this §91.714 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; amended to be effective November 12, 2006, 31 TexReg 9021; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.715. Exceptions to the General Lending Policies.**

(a) Credit unions may provide for the consideration of loan requests from creditworthy members whose credit needs do not fit within the credit union's general lending policies. A credit union may provide for prudently underwritten exceptions to its lending policies. However, the Board is responsible for establishing written standards for the review and approval of exception loans.

(b) Each credit union establishing exceptions to its general lending policies shall establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan shall also be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans will be maintained as a part of the permanent loan file. Each credit union shall monitor compliance with its lending policies and individually report exception loans of a significant size to its board of directors.

(c) Exception loans shall be identified in the credit union's records and their aggregate amount reported at least annually to the board of directors. The aggregate amount of all such loans shall not exceed 10 percent of the credit union's net worth.

*Source: The provisions of this §91.715 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6269; amended to be effective November 12, 2006, 31 TexReg 9021; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.716. Prohibited Fees.**

A credit union shall not make any loan or extend any credit if, either directly or indirectly, any commission, fee, or other compensation from any person or entity other than the credit union is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or extension of credit.

*Source: The provisions of this §91.716 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.717. More Stringent Restrictions.**

The Commissioner may impose more stringent restrictions on a credit union's loans if the Commissioner determines that such restrictions are necessary to protect the safety and soundness of the credit union.

*Source: The provisions of this §91.717 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.718. Charging Off or Setting Up Reserves.**

(a) The commissioner, after a determination of value in accordance with generally accepted accounting principles, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established.

(b) A credit union's financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.

(c) The Board of directors is responsible for ensuring that the credit union has controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with its written policies, generally accepted accounting principles, and relevant supervisory guidance. Policies shall be appropriately tailored to the size and complexity of the credit union and its loan and lease portfolio. As a minimum, a credit union shall develop, maintain, and document the methodology used to determine the amounts of an appropriate ALLL and provisions for loan and lease losses. Adjustments to the ALLL shall be made prior to the end of each calendar quarter in order to accurately reflect the loss exposure on the quarterly call reports.

*Source: The provisions of this §91.718 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6269; amended to be effective November 12, 2006, 31 TexReg 9021; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.719. Loans to Officials and Senior Management Employees.**

(a) **Prohibition on Preferential Rates, Terms, and Conditions.** The rates, terms, conditions, and availability of any loan or other extension of credit made to, or endorsed or guaranteed by, a director, senior management employee, member of the credit committee, or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) **Approval of Governing Board.** Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, senior management employee, member of the credit committee, or an immediate family member of such individual, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and the members of the person's immediate family is greater than 15% of the credit union's net worth. A loan fully secured by shares in the credit union or deposits in other financial institutions shall not be subject to, or included in, the aggregate amounts included in this section.

(c) **Definition.** For purposes of this section, senior management employees shall include the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above), and the chief financial officer; and immediate family members shall include a person's spouse or any other person living in the same household.

(d) **Aggregate Limit on Insider Loans.** The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by, all directors, credit committee members, senior management employees, and immediate family members of all such individuals, shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) **Reports to Governing Board.** At least annually, the president shall make a report to the board of directors on the outstanding indebtedness of all directors, credit committee members, senior management employees, and immediate family members of such individuals. The Board's review shall be included as part of the minutes of the meeting at which the report was presented. The report required by this section shall include the following information:

- (1) The amount of each indebtedness; and
- (2) A description of the terms and conditions (including the interest rate, the original amount and date, maturity date, payment terms, security, if any, and any other unusual term or condition) of each extension of credit.

(f) **Governing Board Option.** At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived for any individual if the aggregate amount of all

outstanding loans and extensions of credit to that person, the person's business interests, and the members of the person's immediate family do not exceed the greater of \$25,000 or one-quarter of one percent (.25%) of the credit union's net worth.

*Source: The provisions of this §91.719 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective on August 10, 2003, 28 TexReg 6269; amended to be effective March 14, 2004, 29 TexReg 2637; amended to be effective November 12, 2006, 31 TexReg 9022; reviewed and amended to be effective November 7, 2010, 35 TexReg 9721; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and readopted to be effective March 14, 2022, 47 TexReg 1628.*

### **§91.720. Small-Dollar, Short-Term Credit.**

(a) General. Credit unions are encouraged to offer small-dollar credit products that are affordable, yet safe and sound, and consistent with applicable laws. The goal in offering these small-dollar credit products should be to help members avoid, or transition away from, reliance on high-cost debt. To accomplish this goal, credit unions should offer products with reasonable interest rates, low fees, and payments that reduce the principal balance of the loan or extension of credit.

(b) Definition. For purposes of this section, small-dollar, short term credit product is defined as a low denomination loan or extension of credit having a term of 12 months or less, where the amount financed does not exceed \$2,000. Each credit union is responsible for establishing appropriate dollar limits and terms based upon its size and sophistication of operations, and its net worth.

(c) Limitation. Accessibility and expediency are important factors for many members with emergency or other short-term needs. Therefore, small-dollar credit products must balance the need for quick availability of funds with the fundamentals of responsible lending. Sound underwriting criteria should focus on a member's history with the credit union and ability to repay a loan within an acceptable timeframe. Given the small dollar amounts of each individual credit request, documenting the member's ability to repay can be streamlined and may need to include only basic information, such as proof of recurring income. The aggregate total of streamlined underwritten small-dollar credit products outstanding, however, shall not exceed 20% of the credit union's net worth.

(d) Fees. A credit union may require a member to pay reasonable expenses and fees incurred in connection with making or closing a loan. With respect to expenses and fees being assessed on small-dollar, short-term credit products, the expenses and fees are presumed to be reasonable if the aggregate total is \$20 or less. In addition, if the credit union refinances a small-dollar, short-term credit product, it may charge such expenses and fees only once in a 180-day period. Credit unions may also charge a late fee as permitted by Finance Code §124.153.

(e) Payments. Credit unions should structure payment programs in a manner that reduces the principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments. Lines of credit should require minimum payments that pay off principal. Excessive renewals or the prolonged failure to reduce the outstanding balance are signs that the product is not meeting the member's credit needs and will be considered an unsound practice.

(f) Required Savings. Credit unions may structure small-dollar credit programs to include a savings component. The funds in this account may also serve as a pledge against the loan or extension of credit.

*Source: The provisions of this §91.720 adopted to be effective July 11, 2010, 35 TexReg 5807; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203; reviewed and readopted to be effective July 16, 2018, 43 TexReg 4995; reviewed and amended to be effective July 3, 2022, 47 TexReg 3663.*

**Title 7**

**Part VI. Credit Union Department**

**Chapter 95**

**SHARE AND DEPOSITOR INSURANCE  
PROTECTION**

**CHAPTER 95**  
**Subchapter A. Insurance Requirements**

**§95.100. Definitions.**

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

- (1) “Act” means the Texas Credit Union Act (Texas Finance Code, Subtitle D).
- (2) “Deposit” means a balance held by a credit union and established by a credit union member, another credit union, a governmental unit, or an authorized nonmember in accordance with standards specified by the credit union, including balances designated as deposits, deposit certificates, checking accounts or accounts by other names. A “deposit” is a debt which earns interest and is owed by the credit union to the account holder.
- (3) “Federally-insured” means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF) under Title II of the Federal Credit Union Act (12 USC Section 1781 et. seq.), or its successor.
- (4) “Insuring organization” means a cooperative share insurance fund or a guaranty corporation or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions will be protected or guaranteed against loss up to a specified level for each account.
- (5) “Membership share” means a share of the credit union which shall be the balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. In the case of a joint account, the account may serve to represent the membership of each of the joint owners who have applied for and were accepted as members, as long as a full membership share for each joint owner seeking membership is maintained in the account.
- (6) “Participating credit union” means a credit union that has applied for and been admitted to participate in an insuring organization’s program and whose participation has not been terminated.
- (7) “Shares” means a balance held by a credit union and established in accordance with standards specified by the credit union including, but not limited to shares, share accounts, share certificates, share draft accounts or other such accounts. “Shares” may include membership shares. In addition, “shares” earn dividends.

*Source: The provisions of this §95.100 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

**§95.101. Share and Depositor Insurance Protection.**

- (a) Each credit union incorporated under the Act or otherwise authorized to do business in this state shall obtain share and deposit insurance for the protection of its members’ accounts. Such share and deposit guarantee insurance may be obtained from the NCUA through the NCUSIF or from an insuring organization approved by the commissioner, with the advice and consent of the commission.

(b) Any credit union that fails to maintain in full force and effect share and deposit insurance protections as provided in this section shall cease accepting deposits and making loans immediately and shall terminate its corporate existence in this state under such terms and conditions as the commissioner deems appropriate.

*Source: The provisions of this §95.101 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.102. Qualifications for an Insuring Organization.**

(a) An insuring organization must, at a minimum, demonstrate the following prerequisites and must continue to meet these standards on an ongoing basis, in order to do business in this state:

(1) The insuring organization is authorized to provide share and deposit insurance protection in its state of domicile or in the State of Texas;

(2) The insuring organization is in good standing with the regulatory authorities in its state of domicile;

(3) The insuring organization receives regular examinations from its state of domicile;

(4) The insuring organization has capital which is adequate for its prospective business;

and

(5) The insuring organization has loss reserves that are actuarially sound.

(b) In addition to the prerequisites delineated above, the department may scrutinize other data and information as the commissioner deems appropriate, including, but not limited to, demonstrated expertise in insuring credit union shares and deposits.

(c) The department shall have the right to examine the books and records of the insuring organization as part of the approval process. The insuring organization shall be assessed the supplemental examination fee as prescribed in § 97.113 of this title (relating to Fees and Charges). The insuring organization shall pay the fee to the department within thirty days of the assessment.

(d) The department may, in approving an insuring organization, impose such written conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

(e) If an approved insuring organization subsequently fails to meet any of the prerequisite standards or written conditions imposed by the department, the commissioner, in the exercise of discretion, may provide a reasonable period of time for the insuring organization to take corrective actions to bring its operations back into compliance. During this period of corrective action, however, an insuring organization may not contract with any additional credit unions to provide share and deposit insurance protection.

*Source: The provisions of this §95.102 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and amended to be effective March 10, 2011, 36 TexReg 1657; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.103. General Powers and Duties of an Insuring Organization.**

In carrying out its general purposes, an insuring organization may:

(1) guarantee to participating credit unions the payment of any deficiency in an individual member's share or deposit account(s) caused by credit union's insolvency or any other reason;

(2) issue share and deposit insurance contracts or otherwise effect credit union share guaranty, and enter into other contracts necessary or advisable in the conduct of its business;

- (3) advance funds in accordance with agreed upon lending terms and conditions to aid participating credit unions to operate and to meet liquidity needs;
- (4) upon the written order of the commissioner, and at such compensation as shall be agreed upon, the insuring organization may assume control of the property and business of any participating credit union and operate it at the direction of the commissioner until its financial stability has been reestablished to the satisfaction of the commissioner, or the credit union has been liquidated or merged into another credit union;
- (5) assist in the merger, consolidation, or liquidation of participating credit unions;
- (6) receive money or other property from participating credit unions;
- (7) conduct investigation and audits of any applicant or participating credit union in order to determine the financial and operating condition of the applicant or participating credit union; and
- (8) establish conditions for participation by credit unions, including the establishment of risk eligibility standards.

*Source: The provisions of this §95.103 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

#### **§95.104. Notices.**

- (a) An insuring organization shall provide written notice to the department of receipt of any application for participation by a credit union. Within 30 days of receipt of the notice, the department will advise the applicant and the insuring organization if it will interpose an objection to the proposal based on safety and soundness concerns. Any such objection must be addressed to the satisfaction of the department before the applicant will be eligible to participate in the insuring organization's program. The insuring organization shall also be responsible for notifying the department of its underwriting decision on any application and advising the department when an applicant has become a participating credit union.
- (b) At least 30-days prior to the effective date of any termination, an insuring organization shall notify the department in writing of any termination, voluntary or involuntary, of a participating credit union.

*Source: The provisions of this §95.104 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

#### **§95.105. Reporting.**

- (a) Within one hundred days after the close of a fiscal year, an insuring organization shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering that fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant. In addition, at least once every three years, the audit shall include an actuarial study of the capital adequacy of the insuring organization.
- (b) The provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

*Source: The provisions of this §95.105 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.106. Amount of Insurance Protection.**

- (a) The primary insured or guaranteed amount for share and deposit accounts of individual members of participating credit unions shall never be less than the corresponding share insurance coverage provided by the NCUSIF or its successor.
- (b) With the approval of the commissioner and if authorized by the insuring organization, a participating credit union may, from time to time as determined by its board of directors, issue membership shares that are not guaranteed and are subordinate to all other claims, including creditors, shareholders and the insuring organization.

*Source: The provisions of this §95.106 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.107. Sharing Confidential Information.**

In order to permit the insuring organization to assess the financial condition and performance of a participating credit union, the department shall, with the consent of such participating credit union, provide to the insuring organization any and all reports of examination conducted by, and orders and determinations issued by, the commissioner regarding that institution.

*Source: The provisions of this §95.107 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.108. Examinations.**

- (a) The department may conduct examinations and investigations within or outside this state to determine whether an insuring organization has engaged, is engaging or is about to engage in any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to the insuring organization.
- (b) In lieu of an examination under this section, the commissioner may accept the examination report of another regulator authorized to examine the insuring organization.

*Source: The provisions of this §95.108 adopted to be effective March 7, 2007, 32 TexReg 1064, reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.109. Fees and Charges.**

- (a) An insuring organization shall pay the cost associated with an examination as prescribed in Section 97.113(k) of this title (relating to Foreign Credit Union Examination Fees).
- (b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the insuring organization.

*Source: The provisions of this §95.109 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.110. Enforcement; Penalty; and Appeal.**

(a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b), (c), (d) and (e) to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §121.002(11)(C). If the insuring organization does not comply with the order, the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, Finance Code, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.

(b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Finality and Request for SOAH Hearing).

*Source: The provisions of this §95.110 adopted to be effective July 8, 2007, 32 TexReg 3982; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

## **Subchapter B. Liquidating Agents**

### **§95.200. Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights.**

(a) The department shall give prompt notice to the NCUA or the applicable insuring organization whenever the commissioner takes possession of the property and assets of a respective federally-insured or participating credit union. The Department shall give further prompt notice whenever the commissioner determines to liquidate the property and assets of such federally-insured or participating credit union.

(b) If the commissioner finds the liquidation of the credit union's assets is prudent under the guidelines established by Texas Finance Code §126.201, the insuring organization, may be appointed liquidating agent for the credit union.

(c) When any member's share or deposit account is paid, the NCUA or, alternatively, the insuring organization shall be subrogated to all rights of the member, up to the amount paid by the NCUA or the insuring organization to such member.

*Source: The provisions of this §95.200 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1065; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and amended to be effective March 1, 2020, 45 TexReg 1218; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

**§95.205. State Not Liable for Any Deficiency.**

Nothing in this chapter creates any liability upon this state for the payment of any funds to any credit union by reason of the acts or omissions of the NCUA or insuring organization, nor shall the state pay any deficiency of any credit union in the event the NCUA or insuring organization is unable to pay such deficiency.

*Source: The provisions of this §95.205 adopted to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

## Subchapter C. Guaranty Credit Union

### §95.300. Share and Deposit Guaranty Credit Union.

(a) The commissioner may authorize, with the advice and consent of the commission, the establishment of a share and deposit guaranty credit union. The charter shall be granted only on proof satisfactory to the commissioner that member credit union convenience and advantage will be promoted by the establishment of the guaranty credit union. In determining whether the convenience and advantage will be promoted, the commissioner shall consider:

(1) Whether the organizational and capital structure and amount of initial capitalization is adequate for the business;

(2) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the credit unions sought to be served;

(3) Whether the credit union's guarantee fund and reserves are actuarially reasonable and computed in accordance with accepted loss reserving standards and principles;

(4) Whether the long-term financial condition of the entity would prejudice the interest of participating credit unions;

(5) Whether the proposed officers, directors, and managers have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the guaranty credit union will operate in compliance with the law and that the long term success of entity is probable; and

(6) Whether the organizers are acting in good faith.

(b) Prior to commencing business in this state, a guaranty credit union is required to file a written application supported by such information and data as the commissioner may require to make the findings necessary to issue a certification of incorporation. The organizers bear the burden of proof to establish that the incorporation of the guaranty credit union will promote credit union member convenience and advantage. The failure of an applicant to furnish required information, data, professional opinions, and other material is considered an abandonment of the application.

(c) The commissioner may require, for submission to the department of public safety, the name and fingerprints of any organizer, director or officer of any guaranty credit union.

(d) The commissioner may, in approving a guaranty credit union, impose such conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

*Source: The provisions of this §95.300 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.301. Authority for a Guaranty Credit Union.**

If a guaranty credit union is authorized, the commissioner shall issue a certificate of incorporation which shall provide that said guaranty credit union shall operate as a central credit union including share and deposit guaranty insurance protection for members subject to supervision, regulation, and examination by the department.

*Source: The provisions of this §95.301 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.302. Powers.**

The guaranty credit union, pursuant to Texas Finance Code §15.410(b) and to the powers contained in Subtitle D, Title 3, Texas Finance Code, may:

- (1) Purchase, hold, lease, receive, use, encumber, sell, exchange, transfer, lend, advance, convey, assign, give, grant, transmit, hypothecate, or dispose of property or funds of any description, nature, or kind or of any interest, rights, title, or privileges therein from or to any participating credit union or any corporation, association, or person, provided that any gift, grant, or transfer of a similar nature shall be made only with the approval of the commissioner;
- (2) Declare and pay dividends on the membership investment fund;
- (3) Make any type of investment authorized by law for a credit union chartered in this state;
- (4) Act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into the court for participating credit unions;
- (5) Accept funds or money for deposit by fiduciaries, trustees, or receivers if managing or holding funds on behalf of a participating credit union;
- (6) Accept funds or money for deposit by financial institutions, trust companies, or insurance companies, if membership or primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of participating credit unions or organizations of participating credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist operations of participating credit unions;
- (7) Act as custodian of individual retirement accounts or of pension funds of participating credit unions, or as trustee under pension and profit sharing plans of participating credit unions;
- (8) Make deposits, purchase shares, and invest in legally chartered credit unions, trust companies, or other financial institutions;
- (9) Impress a lien or exercise its right of setoff on the deposits, dividends, and interest of any participating credit union to the extent of any loans or other obligations due by the participating credit union;
- (10) Make or issue, with the approval of the commissioner, a guarantee or other form of written assurance to the appropriate person, association, corporation, or other entity which is reasonably necessary to facilitate the sale, conveyance, assignment, transfer, or other disposition of all or any part of the property or assets of a participating credit union, and otherwise assist in the merger, consolidation, conservation, suspension, or liquidation of a participating credit union upon the request and under the instruction of the commissioner;
- (11) Advance funds, with or without interest, in accordance with agreed terms and conditions, to aid participating credit unions to continue to operate and to maintain solvency or to maintain account

balances with any financial institution in connection with the assumption of receivables from a participating credit union, or to meet liquidity requirements;

(12) Purchase from a participating credit union any equitable or other interest in its assets at book value or at some other value mutually agreed upon by such credit union and the board of directors of the guaranty credit union, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as the board of directors of the guaranty credit union may determine, provided, however, that all such terms, conditions, agreements and values are approved in writing by the commissioner;

(13) Exercise any setoff or lien rights that a participating credit union may have when the guaranty credit union is acting as conservator or liquidating agent for such credit union;

(14) Exercise rights of subrogation to the extent of all rights the depositors or shareholders may have against a participating credit union to the extent of any payments made by the guaranty credit union to the depositors or shareholders of such credit union, including the right to receive the same dividends, as would have been payable to the depositor or shareholder;

(15) Raise any defense to the payment of a claim or an insured account which a participating credit union could have raised, and when made, the actual payment of an insured account to any person by the guaranty credit union shall discharge the guaranty credit union to the same extent that payment to such person by the participating credit union would have discharged it from liability for the insured account;

(16) Acquire a promissory note or other asset upon which a nonmember is liable, provided such acquisition is made, in the discretion of the guaranty credit union, to protect an inferior lien held by the guaranty credit union, a participating credit union, member of the guaranty credit union or a member of a participating credit union member of the guaranty credit union. Such acquisitions shall not be subject to the restrictions of §91.701 et. seq. of this title (relating to Loans);

(17) Enter into contracts of insurance or reinsurance, insuring in whole or in part its contractual guarantees to participating credit unions and any other insurance or bonding company contracts necessary or advisable in the conduct of its business, provided a guaranty credit union shall not assume any risks from another insurer; and

(18) Exercise the powers granted corporations organized under the laws of this state and such other additional incidental powers not inconsistent with these sections and Subtitle D, Title 3, Texas Finance Code, as may be necessary to enable the guaranty credit union to promote and carry out effectively its purposes.

*Source: The provisions of this §95.302 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.303. Subordination of Right, Title, or Interest.**

No agreement which tends to diminish or defeat the right, title or interest of the guaranty credit union in any asset acquired by it, either as security for a loan or by purchase, shall be valid against the guaranty credit union unless such agreement shall be in writing; shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union; shall have been approved by the board of directors of the credit union with such approval reflected in the minutes of said board; and shall have been, continuously, from the time of its execution, an official record of the credit union.

*Source: The provisions of this §95.303 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; readopted to be effective November 12, 2006, 31 TexReg 9044; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.304. Capital Contributions; Membership Investment Shares; Termination.**

(a) A guaranty credit union shall establish and maintain a guarantee fund. The fund shall be maintained at a normal operating level as defined by the board of directors of the guaranty credit union and approved by the commissioner, however, the normal operating level shall at all times not be less than one percent of the aggregate share capital of participating credit unions. The fund of the guaranty credit union shall be comprised of the following:

- (1) The membership investment shares of each participating credit union;
- (2) Retained and undivided earnings; and
- (3) Any reserves required by the commissioner.

(b) Each participating credit union shall contribute to and maintain with a guaranty credit union a membership investment share, in an amount equal to at least one percent of its insured shares and deposits. Each participating credit union's account shall be adjusted at least annually to reflect changes in the participating credit union's aggregate insured shares and deposits in accordance with procedures adopted by the guaranty corporation's board of directors.

(c) Membership investment shares of participating credit unions shall be established as pledged assets with appropriate explanatory footnotes on the books and records and in the financial statements of the participating credit unions. The guaranty credit union may utilize all of the assets of the guaranty credit union and accordingly reduce the membership investment shares of all participating credit unions, as required, at the discretion of its board of directors, and utilize such assets in accordance with the powers of the guaranty credit union as set out in these rules.

*Source: The provisions of this §95.304 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.305. Audited Financial Statements; Accounting Procedures; Reports.**

(a) A guaranty credit union shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering the fiscal year, within one hundred days after the close of such fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant.

(b) If the opinion of the certified public accountant is other than unqualified pursuant to generally accepted auditing standards, the commissioner shall require the guaranty credit union to take such action as is considered appropriate to permit the removal of such qualification from the opinion.

(c) At a minimum, once every three years the annual audit of the guaranty credit union shall include an actuarial study of the capital adequacy of the credit union.

(d) All of the provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

*Source: The provisions of this §95.305 adopted to be effective November 11, 1999, 24 TexReg 9830; readopted to be effective August 10, 2003, 28 TexReg 6030; amended to be effective March 7, 2007, 32 TexReg 1066; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

### **§95.310. Fees and Charges.**

(a) A guaranty credit union shall pay the fees prescribed in Section 97.113 of this title (relating to Operating Fees) in the same manner as any other credit union chartered under the Act.

(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the guaranty credit union.

*Source: The provisions of this §95.310 adopted to be effective March 7, 2007, 32 TexReg 1067; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

## Subchapter D. Disclosure for Non-Federally Insured Credit Unions

### §95.400. Requirements of Participating Credit Unions.

(a) Every participating credit union shall give appropriate notice of the insurance status of its accounts printed in a manner acceptable to the commissioner. This notice shall be posted at all public entrances at each office and service facility (excluding shared branching facilities) and continuously displayed at each station or window (excluding automatic teller machines and point of sale terminals) where funds or deposits are normally received. At a minimum, the notice shall clearly and conspicuously disclose the following:

- (1) That members' accounts are insured by an insuring organization;
- (2) The name of the insuring organization;
- (3) The extent of the insuring organization's share and deposit insurance protection;

and

(4) That accounts are not insured or guaranteed by any government or government-sponsored agency.

(b) At the time an account is established, a participating credit union shall provide written notice to its members that the share or deposit account will be cooperatively insured or guaranteed by an insuring organization. The notice shall include a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

(c) The noticed required by paragraph (a) of this section shall also be displayed on a participating credit union's web site home page and any other page where it accepts deposits or opens accounts. The dimensions and font size of the notice required by this paragraph must be of a reasonable size and clearly legible.

(d) Every participating credit union shall also include, in any literature, advertising, or other marketing materials related to joining the credit union, or soliciting funds for a share or deposit account, a conspicuous statement that discloses that member accounts are not insured or guaranteed by any government or government-sponsored agency.

*Source: The provisions of this §95.400 adopted to be effective March 7, 2007, 32 TexReg 1067; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 16, 2018, 43 TexReg 7224; reviewed and readopted to be effective June 13, 2022, 47 TexReg 3695.*

#### 4. Future Committee Meetings – tentative dates, agenda items, and arrangements

- Thursday, July 16, 2026
- Thursday, November 5, 2026

#### 5. Adjourn