

**CREDIT UNION COMMISSION
MEETING MINUTES
JUNE 21, 2013**

A. CALL TO ORDER - ASCERTAIN A QUORUM - Chairman Manuel “Manny” Cavazos declared that a quorum was present and called the meeting to order at 8:01 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Government Code. Other members present included Gary Janacek, Sherri Merket, Rob Kyker, Gary Tuma, Vik Vad, and John Yoggerst. Allyson Morrow was absent due to health issues. Kay Stewart was absent due to a scheduling conflict. Assistant Attorney General Nancy Fuller was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner, Daniel J. Buckley, Deputy Commissioner, and Stacey McLarty, Assistant Commissioner and General Counsel. Chairman Cavazos appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**June 7 2013, TRD#2013003761**). Without objection, the Chair reserved the right to rearrange agenda items as necessary. Chairman Cavazos introduced and welcomed new Commission Member Vik Vad.

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION**--Chairman Cavazos invited public input on matters that were not scheduled items on today’s agenda for possible future consideration by the Commission. No public comments were received.
- **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES**
-- Chairman Cavazos inquired if there were any requests or motions to excuse an absence. Mrs. Merket moved to excuse the absence of both

Allyson Morrow and Kay Stewart. Mr. Kyker seconded the motion, and the motion was unanimously adopted.

B. RECEIVE MINUTES OF PREVIOUS MEETING (February 15, 2013)

-- Mr. Kyker moved that the minutes of the Commission's regular meeting of February 15, 2013 be approved as presented. Mrs. Merket seconded the motion, and the motion was unanimously adopted.

C. COMMUNICATIONS

The Chairman referred the members to the correspondence contained in the agenda packet. Commissioner Feeney reported that the Texas Workforce Commission Civil Rights Division (TWC) has completed its review of the Department's personnel policies and procedure systems. Based upon that review, TWC has certified that the Department's personnel policies and procedures are in compliance with the Texas Labor Code. In addition, he noted that the Department has contracted with TWC to conduct Equal Employment Opportunity compliance training in July.

D. COMMITTEE REPORTS

Commissioner Evaluation Committee – In the absence of Committee Chair Morrow, Commissioner Feeney briefly reviewed the procedures that will be used during the FY 2013 performance review. No formal action was taken by the Commission.

E. UNFINISHED BUSINESS

(a) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 97.207 Concerning Contracts for Professional or Personal Service. Commissioner Feeney noted that the

Commission at its February meeting had approved for publication and comment in the *Texas Register* the proposed amendments to Rule 97.207. He indicated that no written comments were received and recommended that the amendments be adopted as previously published.

After a short discussion, Mr. Yoggerst moved that the Commission adopt the proposed amendments to **7 TAC Section 97.207**. Mr. Kyker seconded the motion and the motion was unanimously adopted.

(b) Discussion and Consideration of the Department's FY 2013 Budget and a Possible Vote to Increase the Number of Authorized Full-Time Equivalent Positions. Commissioner Feeney directed the Commission to the financial statements for the nine month period ending May 31st which reflect operating income totaling \$2,746,785, which is \$2,012 more than the YTD budgeted amount. He further noted that approximately \$2,046,361 was spent operating the Department during the same period. There were no questions concerning the financial statements.

Mr. Feeney requested that the Commission consider increasing the number of authorized FTEs during FY 2013 from 24.5 to 25. He indicated that the increase in FTEs could be accomplished without increasing the FY 2013 budget; however, he noted that Commission policy prohibits budgeted funds from being used to pay any part of the salary of an employee which would cause the number of employees to exceed the figure approved in the budget.

Commissioner Feeney explained that the complexity of the today's credit union industry demands a higher level of skill in staff members in order to fulfill the agency's mission. He further noted that recruiting a more highly skilled staff

member would enhance the pool of talented staff that would be available to assume key administrative support positions in the future.

After a brief discussion, Mr. Yoggerst moved that the Commission increase the authorized number of FTEs in FY 2013 to 25. Mr. Kyker seconded the motion and the motion was unanimously adopted.

(c) Discussion and Consideration of Legislative Issues Relating to the 83rd Regular Session that may Impact the Department or Credit Unions under its Jurisdiction. Commissioner Feeney indicated that there were more than 6,000 bills and resolutions were filed during the 83rd Regular Session, but fewer than 1,500 passed both chambers of the legislature. Commissioner Feeney identified several bills that affected credit unions and/or the Department including SB 244, SB 1004, SB 1459, SB 1681, HB 12, HB 1675 and HB 2414. After a brief discussion, no formal action was taken by the Commission.

(d) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department. Deputy Commissioner Buckley reported that the Texas economy has been one of the strongest in the nation. He indicated that despite the continued low interest rate environment, weak loan demand, and NCUA's ongoing assessments for the corporate stabilization fund, the majority of Texas State Chartered Credit Unions continue to exhibit positive trends. Mr. Buckley also highlighted various ratios and other financial statistics from the March 2013 Call Report cycle. After a brief discussion, no formal action was taken by the Commission.

F. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.115 Concerning Safety at Unmanned Teller Machines. Commissioner Feeney noted that in accordance with the Commission's Rule Review Plan, staff has reviewed Rule 91.115 and is proposing certain changes to simplify the rule and make necessary modification to be consistent with the statutes.

Mr. Tuma inquired about the broad nature of the definition of an "unmanned teller machine". Commissioner Feeney explained that definition is contained in the in statutes and would require legislative action to be changed. He did clarify, however, that the requirements are not applicable to unmanned teller machines located inside an office building.

- **Melodie Durst, Executive Director, Credit Union Coalition of Texas –** Ms. Durst thanked the Department for working with the Coalition to identify issues prior to development of the proposal under consideration. She indicated that the Coalition has some concerns but would address those during the comment period. Ms. Durst also questioned a statement in the draft, which indicates that "there is no economic cost anticipated to credit unions or individuals for complying with the amended rule". Ms. Durst suggested that there would be cost for credit unions to provide the proposed annual notice if they do not have a website.

Commissioner Feeney pointed out that the notice of safety precautions is already required by statute and existing rule. The proposed changes to the rule do not add extra notice requirements.

After further discussion, Mr. Yoggerst moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to **7 TAC Section 91.115** as recommended by staff. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(b) **Discussion, Consideration, and Possible Vote to Readopt 91.101 (Definitions and Interpretations), 91.103 (Public Notice of Department Decisions), 91.104 (Public Notice and Comment on Certain Applications), 91.105 (Acceptance of Other Application Forms), 91.110 (Protest Procedures for Applications), 91.120 (Posting of Notice Regarding Certain Loan Agreements), 91.121 (Complaint Notification), 91.125 (Accuracy of Advertising), 91.201 (Incorporation Procedures), 91.202 (Bylaw and Articles of Incorporation Amendments), 91.203 (Share and Deposit Insurance Requirements), 91.205 (Credit Union Name), 91.206 (Underserved Area Credit Unions—Secondary Capital Accounts), 91.208 (Notice of Known or Suspected Criminal Violations), 91.209 (Call Reports and Other Information Requests), 91.210 (Foreign Credit Unions), 91.1003 (Mergers/Consolidations), 91.1005 (Conversion to a Texas Credit Union), 91.1006 (Conversions to a Federal or Out-of-State Credit Union), 91.1007 (Conversion to a Mutual Savings Institution), 91.1008 (Conversion Voting Procedures and Restrictions; Filing Requirements), 91.3001 (Opportunity to Submit Comments on Certain Applications), and 91.3002 (Conduct of Meetings to Receive Comments).** Commissioner Mr. Feeney indicated that in accordance with the Commission's Rule Review Plan, staff examined the remaining rules in Chapter 91, Subchapters A, B, J, and L, and is recommending that no changes be made to these rules. He further indicated that no comments were received during the review period.

After a short discussion, Mr. Yoggst moved that the Commission find that the reasons for adopting **91.103, 91.104, 91.105, 91.110, 91.120, 91.121, 91.125, 91.201, 91.202, 91.203, 91.205, 91.206, 91.208, 91.209, 91.210, 91.1003, 91.1005, 91.1006, 91.1007, 91.1008, 91.300, and 91.3002** continue to exist and that these rules be readopted without change. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151 (Relating to Home Equity Lending Procedures) and Chapter 153 (Relating to Home Equity Lending), in their Entirety. Commissioner Feeney indicated the Home Equity Interpretations are subject to Section 2001.39 of the Government Code, which requires that we review and consider for readoption each interpretation not later than the fourth anniversary of the date on which the interpretation took effective. He noted that on May 17, 2013, notice published notice in the *Texas Register* of the Department's intention to review Chapters 151 and 153. Mr. Feeney further explained that staff has examined all of the interpretations and is recommending that no changes be made at this time. He also indicated that no comments were received during the review period.

Commissioner Feeney pointed out that the Home Equity Interpretations are considered "joint interpretations" with the Finance Commission of Texas. Therefore, to be effective both bodies must take identical actions. He further noted that the Finance Commission is scheduled to consider the readoption of these interpretations at its meeting today.

After a brief discussion, Mr. Vad moved, subject to the approval of the same action by the Finance Commission, that the Commission readopt chapters 151 and

153 in their entirety, without change. Mr. Kyker seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration and Possible Vote to Approve the Department's Operating Plan and Budget for Fiscal Year 2014.

Commissioner Feeney explained that Section 16.003, of the Finance Code, provides the Commission with the exclusive authority to approve the Department's budget. In accordance with the budget policies and guidelines approved at your last meeting, he presented for the Commission's consideration and action a proposed FY 2014 Current Service Level budget of \$2,980,435, reflecting an increase of \$11,000 or 0.4% over the FY 2013 budget. He specifically noted that the total authorized staff for FY 2014 would be 25 persons. Mr. Feeney indicated the increase is primarily related to the raise in the State's contribution to the Employee Retirement System as required by the SB 1459. He briefly discussed the Replacement/Capital Improvement Plan and noted that the proposed budget includes funding to begin to implement an electronic document management system. He indicated that the initial estimate for the digital conversion of Department's files and day-forward documents along with the initial cost of the infrastructure and set-up will be approximately \$50,000. In addition, Mr. Feeney explained that the going forward annual cost would be approximately \$4,800 a year. He also pointed out that the revenues generated from Rule 97.113 will be more than sufficient to cover the proposed Current Service Level budget.

Commissioner Feeney asked the Commission to give serious consideration to also funding an exceptional item request in the amount of \$18,700 to make an across-the-board 1% salary increase for all classified employees examiners. He explained that SB 1459 will increase employee contributions rates to the Employee Retirement System. Therefore, in an effort to avoid a situation whereby a staff

member's take home pay is involuntarily reduced, he asked the Commission to consider an across-the-board increase for all classified employees. Mr. Feeney noted that the additional \$18,700 would bring the total budget request for FY 2014 to \$2,999,135, which would be a 1% increase over FY 2013.

- **Jeff Huffman, Vice President Government Relations, Texas Credit Union League** – Mr. Huffman expressed some concern about the potential implications of the Strategic Goal 3 in the Operating Plan related to safeguarding the interest of credit union members. He encouraged the Commission to not over-emphasize the complaint resolution process in trying to meet the requirements of the statute. He noted that complaints can be best resolved with credit union management and that method is preferable to having an elongated process within the Department. He stressed that members are generally well-served by the credit union industry.

Commissioner Feeney pointed out that no adjustments have been made to the Department's Strategic Plan for Fiscal Years 2013-2017 and neither the proposed budget nor the exceptional item reflect any change in goals.

After further discussion, Mr. Yoggerst moved that the Commission approve the Department's Operating Plan and Budget for Fiscal Year 2014 in the total amount of \$2,999,135, with 25 FTEs. Mr. Vad seconded the motion and the motion was unanimously adopted.

(e) Discussion, Consideration, and Possible Vote to Approve the Revised Oath of Office for the Officers and Employees of the Department. Commissioner Feeney indicated that Section 15.30 of the Finance Code requires

staff to take an oath of office approved by the Commission. He noted that the Commission has not reviewed the oath of office in over 20 years and the current version is worded as if all staff members are examiners. Therefore, staff developed a revised oath of office and Mr. Feeney recommended it for consideration and possible approval.

Mr. Yoggerst inquired about the Department's intention, should the proposal be approved, to have all staff members sign the new oath of office. Commissioner Feeney noted that, with the exception of the most recent hires, staff members have signed an oath of office as part of their in-processing on the first day of employment. He indicated that the Department would take its lead from the Commission on this matter. It was the consensus of the Commission that all staff members should sign the new oath of office. Mr. Kyker also requested that the Commission be advised when all staff members have executed the new oath of office.

After further discussion, Mr. Tuma moved that the Commission approve the revised Oath of Office for the Officers and Employees of the Department. Mr. Kyker seconded the motion and the motion was unanimously adopted.

(f) Discussion, Consideration, and Possible Vote to Approve for Publication and Comment the Proposed Amendments to the Standard Bylaws for State Chartered Credit Unions Concerning Honorary or Advisory Directors. Commissioner Feeney explained that the current version of the Commission's approved Standard Bylaws for State Chartered Credit Union will be inconsistent with the provisions of the recently passed SB 244. More specifically, he noted that SB 244 amends Section 122.056 of the Finance Code to increase from 3 to 6 the number of individuals a credit union's board may appoint to honorary or advisory director positions and the proposal would conform the

Standard Bylaws to the new statutory provision. Mr. Feeney requested that the Commission approve for publication and comment the proposed amendments to the Standard Bylaws.

After a short discussion, Mr. Tuma moved that the Commission approve for publication and comment the proposed amendment to the Standard Bylaws for State Chartered Credit Unions. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(g) Discussion, Consideration, and Possible Vote to Adopt Resolutions Commemorating Educators Credit Union and Trinity Valley Teachers Credit Union for their Contributions to the Citizens of Texas on the Milestone Anniversary Date of its Origin. Commissioner Feeney explained that in accordance with policy, the Commission may adopt resolutions honoring credit unions for reaching certain milestones dates. He noted that the Department was presenting two resolutions to honor 75 years of service.

After a brief discussion, Mr. Kyker moved that the Commission adopt the Resolution Commemorating Educators Credit Union and Trinity Valley Teachers Credit Union for its contributions to the citizens of Texas on this milestone anniversary of its origin and that a copy of the appropriate resolution be mailed to the credit union. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(h) Discussion, Consideration, and Possible Vote to Authorize the Department to Disclose CAMEL Rating Codes to Credit Union Officials during an Examination. Commissioner Feeney explained that in 1995 the commission adopted an operating policy, which directed the Department to discontinue disclosure of CAMEL ratings. As a result, credit unions are not

currently aware of their assigned ratings. He indicated that in the interest of providing greater transparency, the Department is seeking authority to share the Department's risk perspectives with a credit union's board of directors and senior management. Mr. Feeney expressed the opinion that disclosing ratings to a credit union will strengthen communications by encouraging more complete and open discussions of examination findings, conclusions, and recommendations. He also indicated that disclosing the CAMEL rating should help credit union management and directors to better focus on areas of weaknesses and timely corrective measures.

Commissioner Feeney noted that the release of the ratings to credit union officials would not alter the confidentiality of the rating information. He indicated that the Finance Code provides that information provided to credit unions, whether in the form of a report of examination or otherwise, is the confidential property of the Department and may not be made public.

- **Ed Zingleman - Texas Dow Employees Credit Union.** Mr. Zingleman indicated that he did not see a problem in releasing the CAMEL Ratings to the credit union senior management and board of directors.
- **Anne Boatright, President, Capital Credit Union.** Mrs. Boatright pointed out that it is interesting knowing where the credit union stands and she would find this information very helpful.
- **Leon Ewing, President, Firstmark Credit Union.** Mr. Ewing expressed concern about potentially receiving different ratings on joint examinations. He noted that it could be very confusing for a board to receive a rating from the Department and a different one from NCUA.

Mr. Tuma suggested that 18 years ago non-disclosure of the CAMEL ratings may have been a good thing, but times change and in today's world the ratings should be disclosed by the Department.

After a short discussion, Mr. Yoggerst moved that the Commission authorize the commissioner to take the necessary actions to revise the applicable operating policies and procedures to allow the Department to disclose the CAMEL ratings to a credit union's board of directors and senior management at the conclusion of an examination. Mr. Tuma seconded the motion and the motion passed on a 5 to 1 vote with Mr. Tuma, Mr. Kyker, Mrs. Merket, Mr. Vad, and Mr. Yoggerst voting in favor and Mr. Janacek casting a dissenting vote.

(i) Discussion of and Possible Vote to Adopt Resolutions of Appreciation for Outgoing Commission Members Thomas Butler and Dale Kimble. Commissioner Feeney noted that it has been the practice of the Commission to adopt a resolution of appreciation to recognize the service of members upon the completion of their term of office. After a short discussion, **Mr. Kyker** moved that the Commission approve the Resolutions of Appreciation for Outgoing Commission Members Thomas Butler and Dale Kimble as presented and that a copy of the appropriate resolutions be given to them as a token of the Commission's appreciation. Mrs. Merket seconded the motion and the motion was unanimously adopted.

(j) Discussion of the Chair's Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation). Chairman Cavazos noted that as required by Commission Policy, the Chair must appoint members to those committees established by the Commission. He indicated that

the minutes of the meeting should reflect the following appointments to the Commission's two standing committees:

Rules Committee:

Rob Kyker, Chair
John Yoggerst
Sherri Merket
Kay Stewart
Missy Morrow

Commissioner Evaluation Committee:

Missy Morrow, Chair
Gary Tuma
Vik Vad
Rob Kyker
Sherri Merket

H. OTHER BUSINESS

(a) **Next Commission Meeting** -- Chair Cavazos reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for October 18, 2013 at 8:00 a.m. in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chairman Cavazos adjourned the meeting at 9:50 a.m.

Manuel "Manny" Cavazos
Chair

Isabel Velasquez
Recording Secretary

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