

**CREDIT UNION COMMISSION  
MEETING MINUTES  
OCTOBER 18, 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 8:03 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, Allyson Morrow, Kay Stewart, Gary Tuma, and Vik Vad. Rob Kyker 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 (**October 7, 2013, TRD#2013006702**). Without objection, the Chair reserved the right to rearrange agenda items as necessary.

Commission member John Yoggerst arrived at 8:05 a.m.

Chairman Cavazos introduced and welcomed new Commission Member Kay Stewart.

- **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 Rob Kyker. Mr. Janacek seconded the motion, and the motion was unanimously adopted.

**B. RECEIVE MINUTES OF PREVIOUS MEETING (June 21, 2013) --**  
Mr. Vad moved that the minutes of the Commission's regular meeting of June 21, 2013 be approved as presented. Mrs. Morrow 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 indicated that the final report of the post-payment audit performed by the Comptroller's of Public Accounts was provided for the Commission's information and review. In addition Mr. Feeney noted that the final report relating to the audit conducted by the Texas Workforce Commission of Department's personnel policies and procedures was also included. Lastly, Mr. Feeney provided notice, in accordance with Rule 97.113, that he had waived the FY 2014 operating fee for the one credit union that is currently being liquidated.

**D. COMMITTEE REPORTS**

**Commissioner Evaluation Committee** – Allyson Morrow, Chair of the Committee briefly discussed the process and procedures to be used during this year's evaluation of the Commissioner. She further indicated that the actual evaluation would be discussed during the Executive Session.

**E. UNFINISHED BUSINESS**

**(a) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.115 Concerning Safety at Unmanned Teller Machines.** Commissioner Feeney noted that the Commission at its June meeting had approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.115. He indicated that two written comments were received in regards to the proposed amendments. Both commenters were concerned about the potential economic impact of the proposed ongoing safety notice. The commenters also raised concerns that the proposed removal of the definition of “member” may cause confusion about which members should receive the safety notice. Mr. Feeney indicated that staff recommends that the Commission revert back to the existing rule requirement by withdrawing the ongoing safety notice provisions. He noted that this will allow the Department additional time to study alternative methods/designs that might make the notice more useful to members and review the associated costs. Commissioner Feeney also explained that staff disagrees with the assertions that the absence of a definition for “member” could cause uncertainty. He indicated that the statutory language clearly indicates that the notice only needs to be provided to those members that have an access device for an ATM.

After a short discussion, Mr. Janacek moved that the Commission adopt the proposed amendments to **7 TAC Section 91.115** with non-substantive changes to the proposal that was previously published in the *Texas Register*. Mr. Yoggerst seconded the motion and the motion was unanimously adopted.

**(b) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments of *The Standard Bylaws for State Chartered Credit Unions Concerning Honorary or Advisory Directors.*** Commissioner Feeney reported that the Commission at its June meeting had approved for publication and comment in the *Texas Register* the proposed amendments to *The Standard Bylaws*

*for State Chartered Credit Unions.* He indicated that no written comments were received regarding the proposed amendments and that staff recommends that the Commission adopt the proposed changes as previously published.

After a brief discussion, Mrs. Merket moved that the Commission adopt the proposed amendments to *The Standard Bylaws for State Chartered Credit Unions* as previously published in the *Texas Register*. Mr. Tuma seconded the motion and the motion was unanimously adopted.

**(c) Discussion and Consideration of the Department's FY 2013 Financial Results and the FY 2014 Budget.** Commissioner Feeney directed the Commission to the financial statements for September. He noted that during the first month of operation in FY 2014, the Department collected a little over \$1.6 million in revenue, which was about \$169,000 short of budget. Mr. Feeney indicated that the first installment of operating fee was due on September 30<sup>th</sup> and a few credit unions had failed to pay on a timely basis, however, all fees had now been collected. He also explained that during the first month of the fiscal year, approximately \$207,766 was spent operating the Department.

With respect to the FY 2013, Commissioner Feeney explained that the Department had collected revenue of \$2,746,828, which was \$2,055 more than the budgeted amount. During the same period of time, he noted that the Department had spent \$2,769,906 operating the Department, which was \$199,529 less than budget. As a result, the Contingency Reserve Fund was fully funded at \$845,000 and the unobligated and unexpended funds and the excess revenue totaled approximately \$201,583.

Mr. Yoggerst inquired if the remaining excess funds would be returned to the credit unions. Commissioner Feeney responded that in accordance with Commission Policy any excess funds will be used to the reduce the second

installment of the FY 2014 operating fee, which will be assessed in February 2014.

**(d) Discussion, Consideration and Possible Vote Concerning Additional Funding for the Proposed Parking Area on the North Side of the CUD Building.** Commissioner Feeney reported that during the November 2012 meeting, the Commission authorized the Department to move forward with a project to add an asphalt parking lot on the north side of the building with an access drive along the eastside of the building. He noted that the FY 2013 budget included the estimated preliminary project cost, which has been paid to the Texas Facilities Commission. Mr. Feeney noted that bids on the project were received on October 8, and they came in higher than the budgeted amount. The low bid was \$6,161 higher than the estimated preliminary cost. He also explained that due to the slope of the parking lot, bidders were asked to submit cost to install barriers next to the building to prevent someone from accidentally backing into or hitting the building. The lower bidder indicated that it would cost an additional \$3,500 to add bollards. Mr. Feeney indicated that the budget shortage with the bollards would be \$9,661.

After a short discussion, Mr. Yoggerst moved that the Commission amend the FY 2014 budget to include the additional parking lot cost of \$9,661 and also authorize additional funding of up to \$15,090 that may be exclusively used by the commissioner to cover any potential cost overruns or other unexpected cost (total parking lot cost may not exceed \$100,000). Mr. Janacek seconded the motion and the motion was unanimously adopted.

**(e) Discussion and Consideration of HB 2414, which Amends Current Law Relating to Requirements for Open Meetings held by Videoconference Call Written Electronic Communications between Members**

**of a Governmental Body.** Commissioner Feeney reported that House Bill 2414, passed during the 83<sup>rd</sup> Regular Session authorizes a governmental body to meet via videoconference. He noted that staff has been exploring the available options for using videoconferencing for future public meetings, and was seeking guidance from the Commission on the matter. He further indicated that believes the Commission has three viable options: (1) Outfit the building's conference room to allow videoconferencing; (2) Collaborate with another state agency that has the necessary equipment down the street and hold meetings at that location; or (3) Establish a policy that Members will not be able to allow to participate in meetings via videoconference.

After a brief discussion, it was the consensus of the Commission that the Department should let other state agencies take the lead on this matter and that for the time being Members will not participate in meetings via videoconference.

**(f) 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 Texas credit unions continue to report favorable results. The costs associated with advancing technology and achieving and maintaining regulatory compliance are creating challenges for credit unions. These costs are rarely recoverable through fees, so efficient operations are becoming even more critical. Loan demand continues below levels, however, an 8% annualized increase was reflected. New auto sales numbers in August rose to a seven year high. Both 15 and 30 year mortgage rates are up nearly 100 bps over the past 12 months, which has reduced the number of borrowers looking to refinance existing mortgages. Mr. Buckley also highlighted various ratios and other financial statistics from the June 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 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets.** Commissioner Feeney noted that in accordance with the Commission's Rule Review Plan, staff reviewed Rule 91.401 and is proposing certain changes be made to modernize language related to fixed asset limitations and clarify the documents required to accompany an application relating to a waiver or modification of the fixed asset investment limits. He further indicated that staff requests that the Commission approve for publication and comment the proposed amendments to Rule 91.401.

After a brief discussion, Mrs. Stewart moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to **7 TAC Section 91.401** as recommended by staff. Mrs. Merket seconded the motion and the motion was unanimously adopted.

**(b) Discussion, Consideration, and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.405 Concerning Records Retention and Preservation.** Commissioner Feeney noted that in accordance with the Commission's Rule Review Plan, staff reviewed Rule 91.405 and is proposing certain changes to be made to remove an outdated example. He further indicated that staff requests that the Commission approve for publication and comment the proposed amendments to Rule 91.405.

After a short discussion, Mrs. Stewart moved that the Commission approve for publication and comment in the *Texas Register* the proposed amendments to **7 TAC Section 91.405** as recommended by staff. Mr. Vad seconded the motion and the motion was unanimously adopted.

Commissioner Feeney suggested, in the interest of time, that the Commission may want to group the next three items into one motion since neither item is being contested. There being no objection, the Commission considered the following:

**(c) Discussion, Consideration, and Possible Vote to Readopt 7 TAC Sections 91.402 (Insurance for Members), 91.403 (Debt Cancellation Products; Federal Parity), 91.404 (Purchasing Assets and Assuming Deposits and Liabilities of another Financial Institution), 91.406 (Credit Union Service Contracts), 91.407 (Electronic Notification), and 91.408 (User Fee for Shared Electronic Terminal).**

**(d) Discussion, Consideration, and Possible Vote to Readopt 7 TAC Sections 91.4001 (Authority to Conduct Electronic Operations) and 91.4002 (Transactional Web Site Notice Requirement; and Security Review).**

**(e) Discussion, Consideration, and Possible Vote to Readopt 7 TAC Sections 91.5001 (Emergency Closing), 91.5002 (Effect of Closing), and 91.5005 (Permanent Closing of an Office).** Commissioner Mr. Feeney indicated that in accordance with the Commission's Rule Review Plan, staff examined the remaining rules in Chapter 91, Subchapters D, as well as the rules in Subchapters M, and N, and is recommending that no changes be made to these rules. He noted that no comments were received during the review period. He further indicated that staff requests that the Commission readopt these rules without change.

After a short discussion, Mr. Yoggest moved that the Commission find that the reasons for adopting **91.402, 91.403, 91.404, 91.406, 91.407, 91.408, 91.4001, 91.4002, 91.5001, 91.5002, and 91.5005** continue to exist and that these rules be readopted without change. Mrs. Stewart seconded the motion and the motion was unanimously adopted.



**(f) Discussion, Consideration, and Possible Vote to Approve for Publication and Comment the Proposed Repeal of 7 TAC, Part 6, Chapter 91, Subchapter K (Relating to Residential Mortgage Loan Originators Employed by a CUSO) in its entirety.** Commissioner Feeney indicated that with passage of SB 1004, Section 15.4024, Finance Code, was repealed and the authority to examine residential mortgage loan originators employed by a CUSO was transferred from the Department to the Savings and Mortgage Lending Department. He further indicated that staff requests that the Commission approve for publication and comment the proposed repeal of Chapter 91, Subchapter K.

After a brief discussion, Mr. Tuma moved that the Commission approve for publication and comment in the *Texas Register* the proposed repeal of **7 TAC, Part 6, Chapter 91, Subchapter K** in its entirety. Mrs. Merket seconded the motion and the motion was unanimously adopted.

**(g) Discussion, Consideration and Possible Vote to Readopt the Department's Equal Employment Workforce Diversity Plan.** Commissioner Feeney noted that Section 15.313, Finance Code, requires the Commission to prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity. He indicated the Commission originally approved the Plan back in 1997 and that the Plan covers a 12-month period, and therefore, must be ratified annually.

After a short discussion, Mrs. Morrow moved that the Commission readopt the Department's Equal Employment and Workforce Diversity Plan. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

**G. EXECUTIVE SESSION --** Mr. Cavazos stated that the Commission would be entering into Executive Session as provided under Section 551.071 and 551.074 of the Government Code to consult with legal counsel concerning

pending litigation and discuss certain personnel issues related to the Commissioner's annual performance evaluation and remuneration. The Commission entered into Executive Session at 8:48 a.m. and reconvened in open session at 9:17 a.m.

## **H. OTHER BUSINESS**

### **(a) Vote on Matters Discussed in Executive Session:**

#### **1. FY 2014 Performance Targets and Evaluation Form**

After a short discussion, Mrs. Morrow made a motion to maintain the current performance targets and evaluation form for FY 2014. Mrs. Stewart seconded the motion and the motion was unanimously adopted.

#### **2. Remuneration**

Mrs. Morrow made a motion that Commissioner Feeney's salary be set at \$165,000 for FY 2014. Mrs. Merket seconded the motion and the motion was unanimously adopted.

## **H. OTHER BUSINESS**

**(a) Next Commission Meeting** -- Chair Cavazos reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for February 21, 2014 at 8:00 a.m. in Austin.

**ADJOURNMENT** – There being no further business for the Credit Union Commission, Chairman Cavazos adjourned the meeting at 9:23 a.m.

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Manuel “Manny” Cavazos  
Chair

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Isabel Velasquez  
Recording Secretary

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