

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--the Texas Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--a general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--an individual or credit union that has submitted an application to the commissioner.

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information.

(6) Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) Catastrophic act—any natural or man-made disaster such as a flood, tornado, earthquake, major fire or other disaster resulting in physical destruction or damage.

(8) Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) **Associational--based on commonality of interest related to membership in a recognized organization or a portion of such a group. The organization must satisfy each of the following criteria:**

(i) the organization's primary purpose must be other than providing eligibility for credit union services. For purposes of this subparagraph, the practice of a credit union enrolling an individual in an association without that person's knowledge or consent is presumed to be the equivalent of providing eligibility for credit union services;

(ii) The organization's membership must be primarily composed of natural persons;

(iii) The organization's organizational documents clearly define membership eligibility and it may not be based primarily on a client or customer relationship; and

(iv) The organization observes the formalities of corporate separateness from the credit union.

(v) With respect to an associational group within a credit union's field of membership, a credit union may admit to membership:

(I) Employees of the enterprise;

(II) Directors, employees, volunteers, and retirees of the enterprise or its subsidiaries or affiliates;

(III) Natural persons under contract to work for the enterprise, or its subsidiaries or affiliates;

(IV) Family members (as determined by the credit union) of any of the above-described natural persons;

(V) The enterprise and its subsidiaries and affiliates; and
(VI) Other persons approved by the commissioner.

~~Occupational--based on an employment relationship that may be established by:~~

- ~~(i) — employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;~~
- ~~(ii) — employment or attendance at a school; or~~
- ~~(iii) — employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.~~

(B) Occupational--based on a commonality of interest related to employment by, work for, an enterprise, or employment within a specific trade, industry or profession (TIP) with a close nexus and narrow attributes. A geographic limitation is not a requirement for an occupational community of interest; however, for purposes of describing the field of membership, the geographic areas being served may be included. With respect to an occupational group within a credit union's field of membership, a credit union may admit to membership:

- (i) Employees of the enterprise;**
- (ii) Directors, employees, volunteers, and retirees of the enterprise or its subsidiaries or affiliates;**
- (iii) Natural persons under contract to work for the enterprise, or its subsidiaries or affiliates;**
- (iv) Family members (as determined by the credit union) of any of the above-described natural persons;**
- (v) The enterprise and its subsidiaries and affiliates; and**
- (vi) Other persons approved by the commissioner.**

~~(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:~~

- ~~(i) — whether the members pay dues,~~
- ~~(ii) — whether the members participate in furtherance of the goals of the association,~~
- ~~(iii) — whether the members have voting rights,~~
- ~~(iv) — whether there is a membership list,~~
- ~~(v) — whether the association sponsors activities,~~
- ~~(vi) — what the association's membership eligibility requirements are, and~~
- ~~(vii) — the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.~~

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(C) Geographic--based on a clearly defined and specific geographic **boundary. Geographic boundaries may include a city, county (single, multiple, or portions of a county) or their political equivalent, school districts, or a clearly identifiable neighborhood. area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. The Department recognizes four types of affinity on which a geographic community of interest can be based—persons who live in, worship in, attend school in, or work in the geographic area. Businesses and other legal entities with the geographic boundaries may also qualify for membership** there are currently four types of affinity on which a geographic community of interest can be based: persons, who

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(iii) — attend school in, or

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The geographic community of interest requirement ~~is~~ are met if the area to be served is in a recognized single political jurisdiction, e.g., a city, ~~or a~~ ~~or a~~ county, or **their political equivalent, or any contiguous** ~~aa~~ portion thereof.

Some examples of insufficiently defined or unacceptable geographic communities of interest are:

(i) **Persons who live or work within, and business located within, a ten-mile radius of a credit union office;**

(ii) **Persons who live or work in the greater Houston area; or**

(iii) **Persons who live or work in the State of Texas;**

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(9) Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income-producing property or convert the use of income-

producing property to a different or expanded use from its former use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income-producing property that do not change its use.

(10) Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(11) Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(12) Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(13) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(14) Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(15) Improved residential property--real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

(16) Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(17) Loan-to-value ratio--the aggregate amount of all sums borrowed including 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.

(18) Loan and extension of credit--a direct or indirect advance of funds to a member, or on that member's behalf, that is conditioned upon the repayment of the funds by the member or the application of collateral. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(19) Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this

definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

- (A) Buyer and seller are typically motivated;
 - (B) Both parties are well informed or well advised, and acting in their own best interests;
 - (C) A reasonable time is allowed for exposure in the open market;
 - (D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
 - (E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
- (21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U. S. Office of Management and Budget.
- (22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.
- (23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned **deposit-taking** ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:
- (A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or
 - (B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.
- (24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.
- (25) Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.
- (26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.
- (27) Principal office--the home office of a credit union.
- (28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.
- (29) Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.
- (30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.
- (31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

- (32) Resident of this state--a person physically located in, living in or employed in the state of Texas.
- (33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.
- (34) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.
- (35) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.
- (36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.
- (37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code [(TAC)], Banking and Securities, which contains all of the department's rules.
- (38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:
- (A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;
- (B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or
- (C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.
- (39) Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.
- (40) Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.
- (b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.