



CREDIT UNION DEPARTMENT

DATE: November 15, 2011

TO: State Chartered Credit Unions

SUBJECT: Change 30 to Update the Texas Rules for Credit Unions

The attached pages constitute changes to the Texas Rules for Credit Unions. Your book of rules should be updated as follows:

<u>REMOVE PAGES</u>	<u>INSERT</u>	<u>AMENDMENTS OR NEW RULES</u>
Index – pages iii and iv	Index – pages iii and iv	Updated Index
91-9 thru 91-10	91-9 thru 91-10	Amended Rule 91.121
91-61 thru 91-70	91-61 thru 91-70	Amended Rules 91.802, 91.803, 91.804, and 91.805
91-81 thru 91-100	91-81 thru 91-102	New Rules 91.2000, 91.2001, 91.2002, 91.2003, 91.2004, 91.2005, 91.2006, and 91.2007 *(See related links)
		Readopted Rules 91.6001, 91.6002, 91.6003, 91.6004, 91.6005, 91.6006, 91.6007, 91.6008, 91.6009, 91.6010, 91.6011, 91.6012, 91.6013, 91.6014, and 91.6015 with no changes

* Chapter 180 of the Finance Code:
<http://www.statutes.legis.state.tx.us/Docs/FI/htm/Fl.180.htm>

7 TAC Chapter 80:
[http://info.sos.state.tx.us/pls/pub/readac\\$ext.VIEWTAC?ac_vew=4&i=7&pt=4&ch=80](http://info.sos.state.tx.us/pls/pub/readac$ext.VIEWTAC?ac_vew=4&i=7&pt=4&ch=80)

FOR YOUR RECORDS - Please keep this letter of transmittal behind the **Update Tab** of the Rules Section of your binder as a record to show your rules are up to date.

The newsletter for October 31, 2011 has a summary of the amended rules.

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equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

Source: The provisions on this §91.115 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549.

§91.120. Posting of Notice Regarding Certain Loan Agreements.

(a) As required by the Business and Commerce Code §26.02, all credit unions are required to conspicuously post notices informing members of the requirements that certain loan agreements must be in writing. The notice must include the language and be in the format prescribed by the Finance Commission of Texas in §3.34 of this title (relating to Posting of Notice in All Financial Institutions).

(b) Each credit union shall post the notice required by subsection (a) in the lobby of each of its offices other than off-premises electronic deposit facilities.

Source: The provisions on this §91.120 adopted to be effective May 11, 2000, 25 TexReg 3944; readopted to be effective December 18, 2003, 29 TexReg 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549.

§91.121. Complaint Notification.

(a) Definitions.

(1) “Privacy notice” means any notice which a credit union gives regarding a member’s right to privacy, as required by a state or federal law.

(2) For purposes of subsection (b) of this section and unless the context reads otherwise, “notice” means a complaint notification in the form set forth in subsection (b)(1) of this section.

(b) Required Notice.

(1) Credit unions must provide their members with the following notice describing the process for filing complaints:

“If you have a problem with the services provided by this credit union, please contact us at:

(Your Name) Credit Union

Mailing Address

Telephone Number or e-mail address

The credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. If any dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department at 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Website: www.cud.texas.gov.”

(2) The title of this notice shall be “**COMPLAINT NOTICE**” and must be in all capital letters and boldface type.

(3) The credit union must provide the notice as follows:

(A) In each office where a credit union typically conducts business on a face-to-face basis, the notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) If a credit union maintains a website, it must include the notice or a link to the notice in a reasonably conspicuous place on the website.

(C) If a credit union distributes a newsletter, it must include the notice on approximately the same date at least once during each calendar year in any newsletter distributed to its members.

(D) If a credit union does not have an Internet website or does not distribute a newsletter, the notice must be included with any privacy notice the credit union is required to give or send its members.

Source: The provisions on this §91.121 adopted to be effective March 4, 2009, 34 TexReg 1399; amended to be effective March 14, 2010, 35 TexReg 1977; amended to be effective November 13, 2011, 36 TexReg 7540.

§91.125. Accuracy of Advertising.

(a) As used in this rule, an advertisement is any informational communication, including oral, written, electronic, broadcast or any other type of communication, made to members, prospective members, or to the public at large in any manner designed to attract attention to the business of a credit union.

(b) No credit union shall disseminate or cause the dissemination of any advertisement that is in any way intentionally or negligently false, deceptive, or misleading. An advertisement shall be deemed by the Commissioner to be intentionally or negligently false, deceptive, or misleading if it:

- (1) contains materially false claims or misrepresentations of material facts;
- (2) contains materially implied false claims or implied misrepresentations of material fact;
- (3) omits material facts;
- (4) makes a representation likely to create an unjustified expectation about credit union products or services;
- (5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;
- (6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and
- (7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

Source: The provisions on this §91.125 adopted to be effective November 16, 2005, 30 TexReg 7432; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549.

officers (e.g. vice presidents and above), and the chief financial officer; and immediate family shall include a person's spouse or any other person living in the same household.

(h) Examination fee. If a CUSO is requested by the commissioner to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). The commissioner may waive the supplemental examination fee or reduce the fee as he deems appropriate.

(i) Exclusion. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may invest in or make loans to a CUSO that is not limited by the restriction set forth in subsection (e)(3) of this section; provided the activities of the CUSO are exclusively limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exclusion, all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing loan, advance additional funds or increase the investment in the CUSO without the prior written approval of the commissioner.

(j) Divestiture. If the limitations in subsection (d) of this section are reached or exceeded solely because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, divestiture is not required. A credit union may continue to invest up to the limitation without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

Source: The provisions of this §91.801 adopted to be effective August 14, 2000, 25 TexReg 7635; adopted to be effective January 7, 2004, 29 TexReg 83; amended to be effective July 11, 2004, 29 TexReg 6630; amended to be effective July 10, 2005, 30 TexReg 3863; amended to be effective November 11, 2007, 32 TexReg 7921; amended to be effective March 4, 2009, 34 TexReg 1400.

§91.802. Other Investments.

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

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(5) Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(6) Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

(7) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(8) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(9) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include an investment authorized by §124.351(a)(1) of the Act.

(10) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

(11) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's, Moody's, or Fitch which is recognized by the Securities and Exchange Commission.

(12) Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

(13) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(14) Borrowing repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or (B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(18) Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review and approve the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized to be purchased.

(2) The aggregate limit on the amount that may be invested in any single investment or investment type, set as a percentage of net worth.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) The authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and the internal process for assessing the credentials and previous record of the individual or firm.

(5) The risk management framework given the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) The authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Borrowing repurchase transactions. A credit union may enter into a borrowing repurchase transaction, which is a borrowing transaction subject to the Act, provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) investments referred to in subparagraph (A) of this paragraph mature no later than the maturity date of the borrowing repurchase transaction; and

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or investment activity that is authorized under Texas Finance Code §124.351 and this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) Government-sponsored enterprises. A credit union may invest in government-sponsored enterprise obligations such as Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Farm Credit Bank, and the Student Loan Marketing Association.

(11) Commercial paper. A credit union may invest in commercial paper issued by a corporation domiciled within the United States and having a short-term or commercial paper rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.

(12) Corporate bonds. A credit union may invest in corporate bonds issued by a corporation domiciled in the United States. The bonds must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of five years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds rated by a NRSRO in one of the two highest long-term rating categories with remaining maturities of five years or less.

(14) Mortgage-related securities. With the exception of "accrual bonds" (or Z-bonds) or the residual interest of the mortgage-related security, a credit union may invest in mortgage-related securities backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home. The security must be rated by a NRSRO in one of the two highest long-term rating categories.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities which are rated by a NRSRO in one of the two highest long-term rating categories.

(d) Documentation. A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule including:

(1) Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held.

(2) Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider.

(3) The reference to and use of NRSRO credit ratings in this rules provides a minimum threshold and is not an endorsement of the quality of the ratings. Credit unions must conduct their own independent credit analyses to determine that each security purchased presents an acceptable credit risk, regardless of the rating.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities regulators and securities industry self-regulatory organizations, such as the Financial Industry Regulatory Authority and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, long-term or counterparty ratings that have been assigned by NRSROs, reports of NRSROs, relevant disclosure documents such as annual independent auditor reports, and other sources of financial information.

(3) Paragraphs (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an aggregate amount not to exceed 100% of its net worth at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities

industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

(h) Investment Practice Permitted to Federal Credit Unions.

If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of management of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority.

If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

- (A) A copy of the credit union's investment policy;
- (B) The higher limit or ratio sought;
- (C) An explanation of the need to raise the limit or ratio; and
- (D) Documentation supporting the credit union's ability to manage this activity;

(2) In determining action on a waiver request made under this subsection, the commissioner will consider the:

(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.

(C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

Source: The provisions of this §91.802 adopted to be effective February 11, 2001, 26 TexReg 1135; amended to be effective August 11, 2002, 27 TexReg 6835; amended to be effective November 14, 2004, 29 TexReg 10254; amended to be effective November 11, 2007, 32 TexReg 7922; amended to be effective July 12, 2009, 34 TexReg 4512; reviewed and amended to be effective November 13, 2011, 36 TexReg 7540.

§91.803. Investment Limits and Prohibitions.

(a) Limitations. A credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation does not apply to investments issued by, or fully guaranteed as to principal and interest by, the United States or an agency, enterprise, corporation, or instrumentality of the United States, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation.

(b) Designated Depository. As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) Prohibited Activities.

(1) Definitions.

(A) Adjusted trading--selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) Collateralized mortgage obligation (CMO)--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) Fair value--the price at which a security can be bought or sold in a current, arms length transaction between willing parties, other than in a forced or liquidation sale.

(D) Real estate mortgage investment conduit (REMIC)--a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(E) Residual interest--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(F) Short sale--the sale of a security not owned by the seller.

(G) Stripped mortgage-backed security (SMBS)--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities. Some mortgage-backed securities represent essentially principal-only cash flows with nominal interest cash flows or essentially interest-only cash flows with nominal principal cash flows. These securities are considered SMBSs for the purposes of this rule.

(H) Zero coupon investment--an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate agreements;

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities, residual interests in CMOs/REMICs, mortgage servicing rights, commercial mortgage related securities, or small business related securities;

(D) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(E) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits; or

(F) Purchase securities used as collateral by a safekeeping concern.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(A) Board policies approving the activities and establishing limits on them;

(B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(D) Examples of reports the credit union will generate to monitor the activities;

(E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and

(G) The internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice for one or more particular credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as

the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be deemed to be engaging in an unsound practice.

Source: The provisions of this §91.803 adopted to be effective July 9, 2001, 26 TexReg 5001; amended to be effective July 11, 2004, 29 TexReg 6632; amended to be effective November 11, 2007, 32 TexReg 7922; reviewed and amended to be effective November 13, 2011, 36 TexReg 7544.

§91.804. Custody And Safekeeping.

(a) A credit union's purchased investments and repurchased collateral must be in its possession, recorded as owned by the credit union through the federal reserve book-entry system, or be held by a board-approved safekeeper under a bailment for hire contract or a custodial arrangement subject to regulation by the Securities and Exchange Commission. Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission or a federal or state financial institution regulatory agency. For the purposes of this section a bailment for hire contract has the same meaning as in §91.802 (relating to Other Investments). Annually, a credit union must analyze the ability of any safekeeper used by the credit union to fulfill its custodial responsibilities, as evidenced by capital strength and financial conditions. The credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations (NRSROs), relevant disclosure documents such as annual independent auditor reports, and other sources of financial information. At least monthly, a credit union must obtain and reconcile a statement of purchased investments and repurchased collateral held in safekeeping.

(b) A credit union that invests funds in a certificate of deposit in a financial institution as defined in §91.802 (relating to Other Investments) shall hold such certificate of deposit in the name of the credit union or, if held by a safekeeper or registered broker-dealer, in the safekeeper's or registered broker-dealer's name as custodial nominee for a credit union. Any certificate of deposit held by a safekeeper or registered broker-dealer as custodial nominee for a credit union or the credit union's registered broker or dealer must be eligible for extended or flow-through insurance coverage to the credit union through either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

Source: The provisions of this §91.804 adopted to be effective August 14, 2000, 25 TexReg 7636; amended to be effective July 11, 2004, 29 TexReg 6632; amended to be effective March 6, 2005, 30 TexReg 1065; amended to be effective November 11, 2007, 32 TexReg 7922; reviewed and amended to be effective November 13, 2011, 36 TexReg 7544.

§91.805. Loan Participation Investments.

(a) A credit union may purchase a participation interest in a non-member loan from a corporation, credit organization, or financial organization, as permitted by §124.351(a)(8) of the Act, provided the credit union:

(1) is specifically empowered to purchase such investments in the board's written investment policy;

(2) does not obtain an interest greater than 90% of the face amount of each individual loan, if the borrower is not a member of the credit union or a member of another participating credit union;

(3) uses the same underwriting standards for loan participation investments as it does for loans originated by the credit union; and

(4) limits its aggregate investment in loan participation investments to an amount no greater than 50% of the credit union's net worth.

(b) Financial Reporting. A participation interest in a non-member loan purchased under this section shall be reported in accordance with generally accepted accounting principles.

(c) Other Requirements. A credit union purchasing a loan participation investment must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

Source: The provisions of this §91.805 adopted to be effective August 14, 2000, 25 TexReg 7636; readopted to be effective February 24, 2004, 29 TexReg 2393; amended to be effective November 11, 2007, 32 TexReg 7923; reviewed and amended to be effective November 13, 2011, 36 TexReg 7544.

§91.808. Reporting Investment Activities to the Board of Directors.

(a) A credit union shall provide its board of directors a monthly comprehensive report of investment activities, including:

(1) investments purchased and sold during the month;

(2) unrealized market gains or losses compared to book value for each security at month's end;

(3) fair or market value of each security;

(4) total book value of investments outstanding at month's end;

(5) unrecorded and unreported obligations to buy or sell investments; and

(6) amount of investments, other than designated depositories, in other institutions that are not fully insured by the Federal Deposit Insurance Corporation, National Credit Union Administration, or federal or state governments or their agencies.

(b) The credit union shall also provide a quarterly report to the board of directors that summarizes the volatility of the entire security portfolio, if the aggregate amount of securities with one or more of the features included below exceeds the credit union's net worth:

(1) embedded options;

(2) remaining maturities greater than three years; or

(3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) The report described in subsection (b) must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on the:

(1) fair value of each security in the entire portfolio;

(2) fair value of the entire security portfolio as a whole; and

(3) credit union's net worth.

(d) For the purposes of this section, an embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

Source: The provisions of this §91.808 adopted to be effective February 11, 2001, 26 TexReg 1137; readopted to be effective February 24, 2004, 29 TexReg 2393; amended to be effective November 11, 2007, 32 TexReg 7923; reviewed and readopted to be effective June 20, 2011, 36 TexReg 4152.

Subchapter K. Residential Mortgage Loan Originators Employed by a CUSO

§91.2000. Definitions and Licensing.

(a) Definitions

(1) Credit union subsidiary organization (CUSO) shall have the same meaning as in Finance Code §180.002.

(2) Residential mortgage loan originator shall have the same meaning as in Finance Code §180.002.

(3) Nationwide Mortgage Licensing System and Registry shall have the same meaning as in Finance Code §180.002.

(b) Licensing. A residential mortgage loan originator employed by a CUSO shall be licensed as required by Finance Code Chapters 156 and 180, and shall comply with all requirements for obtaining, renewing, and maintaining a license under those chapters and under 7 TAC Chapter 80.

(c) Supervision and Examination. The commissioner shall examine, inspect, investigate, and enforce compliance with all legal and regulatory requirements applicable to residential mortgage loan originators employed by a CUSO. The commissioner may examine, inspect, or investigate the employees of a CUSO as frequently as the commissioner considers it necessary or advisable to safeguard the public or to efficiently enforce applicable law.

Source: The provisions of this §91.2000 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2001. Books and Records; Examinations; Reimbursement of Travel Costs.

(a) A residential mortgage loan originator employed by a CUSO shall maintain, at the location specified in his or her application, books and records as required by 7 TAC §80.13, and shall promptly make the books and records available to the department on request. The department, through its examiners, shall periodically examine these books and records. The examination shall be conducted in a manner consistent with 7 TAC §80.20.

(b) If the Department must travel out-of-state to conduct an examination of a residential mortgage loan originator employed by a CUSO, because the required records are maintained at a location outside of the state, the CUSO will be required to reimburse the Department for its actual costs incurred in connection with the out-of-state travel, including transportation, lodging, meals, and any other reasonably related costs.

Source: The provisions of this §91.2001 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2002. Complaints and Investigations.

If the commissioner receives a signed written complaint alleging improper acts or omissions by a residential mortgage loan originator employed by a CUSO, the commissioner shall investigate as set out in Finance Code §15.409 and 7 TAC §80.15. If the investigation finds grounds for suspending or terminating the residential mortgage loan originator's license, the commissioner shall promptly refer the matter to the Department of Savings and Mortgage Lending for further action.

Source: The provisions of this §91.2002 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2003. Enforcement Action.

To ensure the effective supervision and enforcement of Finance Code Chapters 156 and 180 and all applicable rules, the commissioner may take any of the following actions:

- (1) order restitution against a residential mortgage loan originator employed by a CUSO for violations of applicable laws;
- (2) impose an administrative penalty on a residential mortgage loan originator employed by a CUSO, subject to Finance Code §180.202; or
- (3) issue orders or directives as provided by Finance Code §180.203.

Source: The provisions of this §91.2003 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2004. Mortgage Call Reports.

A CUSO that has an approved license during the reporting period must file a call report as required by 7 TAC §80.23. The report must be submitted to and comply with the requirements of the Nationwide Mortgage Licensing System and Registry.

Source: The provisions of this §91.2004 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2005. Loan Status Form.

A residential mortgage loan originator shall provide a prospective mortgage loan applicant with the appropriate loan status form as prescribed by 7 TAC §80.22.

Source: The provisions of this §91.2005 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2006. Required Disclosures.

A residential mortgage loan originator employed by a CUSO shall provide the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan: "COMPLAINTS REGARDING RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CREDIT UNION SERVICE ORGANIZATION SHOULD BE SENT TO THE CREDIT UNION DEPARTMENT, 914 EAST ANDERSON LANE, AUSTIN, TEXAS 78752. TELEPHONE INQUIRIES MAY BE DIRECTED TO THE CREDIT UNION DEPARTMENT AT (512) 837-9236."

Source: The provisions of this §91.2006 adopted to be effective November 13, 2011, 36 TexReg 7545.

§91.2007. False, Misleading, or Deceptive Practices.

A residential mortgage loan originator employed by a CUSO may not use any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services or contracts, or which violates the requirements of 7 TAC §80.10 and §80.11.

Source: The provisions of this §91.2007 adopted to be effective November 13, 2011, 36 TexReg 7545.

Subchapter L. Submission of Comments by Interested Parties

§91.3001. Opportunity To Submit Comments On Certain Applications.

- (a) An interested party may submit comments to the commissioner on the following matters:
- (1) an application for incorporation under the Texas Finance Code, Section 122.001;
 - (2) an amendment to a credit union's articles of incorporation under the Texas Finance Code, Section 122.011, which includes an amendment to expand the credit union's field of membership; or
 - (3) an application to merge or consolidate under the Texas Finance Code, Section 122.152.
- (b) An interested party is a person or entity that has an interest in particular to the application other than as a member of the general public.
- (c) Acceptance of comments under this section does not constitute a determination of standing to protest or otherwise participate in a contested case hearing on the application.
- (d) Comments may be made in writing or provided in a meeting with the commissioner or deputy commissioner, as follows:
- (1) written comments shall be submitted within 30 days after notice of the application is published in the Texas Register or the department's newsletter, whichever is later;
 - (2) a meeting to receive comments shall be held upon written request by an interested party or upon the commissioner's direction.

Source: The provisions of this §91.3001 adopted to be effective May 10, 1998, 23 TexReg 4568; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549.

§91.3002. Conduct Of Meetings To Receive Comments.

- (a) Meetings to receive comments under 91.3001 of this title (relating to opportunities to submit comments on certain applications) will be conducted in the following manner:
- (1) a written request for a meeting to receive comments must be received by the department within 30 days after publication of the notice of the application and shall contain the following:
 - (A) the identity of the requestor, including the name of a natural person who represents a business entity or other association, mailing address, daytime telephone number, and a facsimile number if any;
 - (B) the name of the application and type of application;
 - (C) a description of the requestor's interest in the application; and
 - (D) a list of at least three dates and times within 30 days after the date of publication of notice of application, which are available for the meeting.
 - (2) the meeting will be scheduled and may be rescheduled, if necessary, by the commissioner to occur after at least three business days' notice by telephone, facsimile, or mail;
 - (3) one meeting may be scheduled to receive comments from more than one interested party, at the discretion of the commissioner;
 - (4) a limit on the length and other conditions for the conduct of the meeting may be imposed by the commissioner, and the conditions will be stated in the notice of the meeting;

(5) the meeting may be conducted by telephone with the consent of the interested party; and

(6) the department is not required to make a record of the meeting.

(b) An interested party who fails to attend a meeting scheduled for the party's benefit may submit written comments within three days after the date scheduled for the meeting, but the commissioner is not required to schedule another meeting.

(c) The purpose of the meeting is only to receive comments, and no decision, preliminary or otherwise, will be made at the meeting.

Source: The provisions of this §91.3002 adopted to be effective May 10, 1998, 23 TexReg 4568; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4550.

Subchapter M. Electronic Operations

§91.4001. Authority to Conduct Electronic Operations.

- (a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.
- (b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.
- (c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:
- (1) Identify, assess, and mitigate potential risks and establish prudent internal controls, and system backup procedures; and
 - (2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:
 - (A) the prevention of unauthorized access to credit union records and credit union members' records;
 - (B) the prevention of financial fraud through the use of electronic means or facilities; and
 - (C) compliance with applicable security device requirements for teller machines contained elsewhere in Chapter 91.
- (d) All credit unions engaging in such electronic activities must comply with all applicable state and federal laws and regulations as well as address all safety and soundness concerns.
- (e) A credit union shall review, on at least an annual basis, its system backup procedures for all electronic activities.
- (f) A credit union shall not be considered doing business in this State solely because it physically maintains technology, such as a server, in this State, or because the credit union's product or services are accessed through electronic means by members located in this State.
- (g) A credit union that shares electronic space, including a co-branded web site, with a credit union affiliate, or another third-party must take reasonable steps to clearly and conspicuously distinguish between products and services offered by the credit union and those offered by the credit union's affiliate, or the third-party.

Source: The provisions of this §91.4001 adopted to be effective May 11, 2000, 25 TexReg 3953; amended to be effective December 8, 2002, 27 TexReg 11074; amended to be effective March 13, 2006, 31 TexReg 1648; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

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

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

(1) Include an address for and a description of the transactional features of the web site;

(2) Indicate the date the transactional web site will become operational; and

(3) List a contact person familiar with the deployment, operation, and security of the transactional web site.

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

(c) Credit unions, which have a transactional web site, must provide for a review of the adequacy of the web site's security measures at least once every two years. The scope of the review should cover the adequacy of physical and logical protection against unauthorized access including denial of service and other forms of electronic access. If the credit union outsources this technology platform, it can rely on testing performed for the service provider to the extent it satisfies the scope requirements of this subsection.

Source: The provisions of this §91.4002 adopted to be effective May 13, 1999, 24 TexReg 3475; amended to be effective December 8, 2002, 27 TexReg 11075, amended to be effective March 13, 2006, 31 TexReg 1648; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

Subchapter N. Emergency or Permanent Closing of Office or Operation

§91.5001. Emergency Closing.

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

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

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

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

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

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

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

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

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

(B) labor dispute or strike;

(C) disruption or failure of utilities, transportation, communication or information systems and any applicable backup systems;

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

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

(F) epidemic or other catastrophe; or

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

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

Source: The provisions of this §91.5001 adopted to be effective August 9, 1999, 24 TexReg 6026; readopted to be effective August 2, 2002, 27 TexReg 6874, amended to be effective March 13, 2006, 31 Tex Reg 1649; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

§91.5002. Effect of Closing.

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

Source: The provisions of this §91.5002 adopted to be effective August 9, 1999, 24 TexReg 6026; readopted to be effective August 2, 2002, 27 TexReg 6874; amended to be effective March 13, 2006, 31 Tex Reg 1649; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

§91.5005. Permanent Closing of an Office.

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

Source: The provisions of this §91.5005 adopted to be effective March 13, 2006, 31 Tex Reg 1649; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

Subchapter O. Trust Powers

§91.6001. Fiduciary Duties.

A credit union must conduct its trust operations in accordance with applicable law, and must exercise its fiduciary powers in a safe and sound manner. All fiduciary activities shall be under the direction of the credit union's board of directors. In carrying out its responsibilities, the board may assign, by action duly entered in the minutes, any function related to the exercise of fiduciary powers to any director, officer, employee, or committee thereof.

Source: The provisions of this §91.6001 adopted to be effective August 10, 2003, 28 TexReg 6270; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6002. Fiduciary Capacities.

A credit union is subject to this chapter if it acts in a fiduciary capacity. A credit union acts in a fiduciary capacity when it acts in any of the following capacities:

- (1) Trustee.
- (2) Custodian.
- (3) Executor.
- (4) Administrator.
- (5) Guardian.
- (6) Receiver.

Source: The provisions of this §91.6002 adopted to be effective August 10, 2003, 28 TexReg 6270; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6003. Notice Requirements.

(a) Intent. A credit union is required to notify the commissioner in writing of its intent to exercise fiduciary powers, at least 31 days prior to the anticipated commencement date of such fiduciary activities. The notice must contain:

- (1) A statement describing the fiduciary powers that the credit union will exercise;
- (2) An opinion of counsel that the proposed activities do not violate law, including citations to applicable law;
- (3) A statement that the capital of the credit union is not less than the capital required by law of other financial institutions exercising comparable fiduciary powers;
- (4) Sufficient biographical information on proposed trust management personnel to enable the Department to assess their qualifications; and
- (5) A description of the locations where the credit union will conduct fiduciary activities.

(b) Prior Activity. A credit union that has initiated trust activities prior to the effective date of this rule shall file the notice prescribed in subsection (a) by October 1, 2003.

Source: The provisions of this §91.6003 adopted to be effective August 10, 2003, 28 TexReg 6270; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6004. Exercise of Fiduciary Powers.

(a) Supervisory Review. Unless otherwise notified by the department, a credit union may exercise its fiduciary powers on the 30th day after the credit union receives written confirmation from the Department that the notice required under Section 91.6003 of this title (relating to Notice Requirements) is complete and accepted for filing. The Department will consider the following factors when reviewing such a notice:

- (1) The credit union's financial condition.
- (2) The credit union's capital and whether that capital is sufficient under the circumstances.
- (3) The credit union's overall performance.
- (4) The fiduciary powers the credit union proposes to exercise.
- (5) The availability of legal counsel.
- (6) The experience and expertise of proposed trust management personnel.
- (7) The needs of the members to be served.
- (8) Any other facts or circumstances that the Department considers appropriate.

(b) Written Notice. Prior to expiration of the 30 day period referred to in subsection (a), the commissioner may give the credit union written notice of denial or consent, subject to certain conditions.

(c) Acceptance of Conditions. Commencement of the exercise of fiduciary powers constitutes confirmation of acceptance of all conditions imposed by the commissioner under subsection (b) and shall be considered an enforceable agreement against the credit union for all purposes.

Source: The provisions of this §91.6004 adopted to be effective August 10, 2003, 28 TexReg 6270; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective on October 24, 2011, 36 TexReg 7570.

§91.6005. Exemption from Notice.

A credit union does not need to provide notice under section 91.6003 (relating to notice requirements) to act as a trustee or custodian of any form of retirement, pension, profit sharing or deferred income accounts for its members, pension funds of self-employed individuals eligible for membership and pension funds of a company or organization whose employees are eligible for membership in the credit union if acting as such will only involve holding the funds on deposit and reporting information to the account holders and government agencies. All contributions to such fiduciary accounts, however, must be initially made to a share or deposit account in the credit union and the credit union may not directly or indirectly provide any investment advice for such fiduciary accounts.

Source: The provisions of this §91.6005 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6006. Policies and Procedures.

A credit union exercising trust powers shall adopt and follow written policies and procedures adequate to maintain its fiduciary activities in compliance with applicable law. Among other relevant matters, the policies and procedures should address, where appropriate, the credit union's:

- (1) Brokerage placement practices;

- (2) Methods for ensuring that fiduciary officers and employees do not use material inside information in connection with any decision or recommendation to purchase or sell any security;
- (3) Methods for preventing self-dealing and conflicts of interest;
- (4) Selection and retention of legal counsel who is readily available to timely review trust instruments or other documents creating the credit union's fiduciary status and advise the credit union and its fiduciary officers and employees on all fiduciary related matters; and
- (5) Investment of funds held as fiduciary, including short-term investments and the treatment of fiduciary funds awaiting investment or distribution.

Source: The provisions of this §91.6006 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6007. Review of Fiduciary Accounts.

- (a) Pre-acceptance review. Before accepting a fiduciary account, a credit union shall review the prospective account and related instruments and documents to determine whether it can properly administer the account.
- (b) Initial post-acceptance review. Upon the acceptance of a fiduciary account for which a credit union has investment discretion, the credit union shall conduct a prompt review of all assets of the account to evaluate whether they are appropriate for the account.
- (c) Annual review. At least once during every calendar year, a credit union shall conduct a review of all assets of each fiduciary account for which the credit union has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.

Source: The provisions of this §91.6007 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6008. Recordkeeping.

A credit union shall adequately document the establishment and termination of each fiduciary account and shall maintain adequate records for all fiduciary accounts. All records pertaining to a fiduciary account shall be separate and distinct from other records of the credit union.

Source: The provisions of this §91.6008 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6009. Audit.

At least once during each calendar year, a credit union shall arrange for a suitable audit by a certified public accountant in accordance with generally accepted standards for attestation engagement. The audit must ascertain whether the credit union's internal control policies and procedures provide reasonable assurance of three things:

- (1) The credit union is administering fiduciary activities in accordance with applicable law and the trust instrument or other documents creating the fiduciary responsibility;

- (2) The credit union is properly safeguarding fiduciary assets; and
- (3) The credit union is accurately recording transactions in appropriate accounts in a timely manner.

Source: The provisions of this §91.6009 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6010. Custody of Fiduciary Assets.

(a) A credit union shall place assets of fiduciary accounts in the joint custody or control of not fewer than two the fiduciary officers or employees designated for that purpose by the board of directors.

(b) A credit union shall keep assets of fiduciary accounts separate from the assets of the credit union. Except as otherwise authorized by applicable law and as may be in the best interests of the beneficiaries of the fiduciary account, a credit union shall keep assets of each fiduciary account separate from all other accounts.

Source: The provisions of this §91.6010 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6011. Trust Funds.

All monies received by a credit union as fiduciary on trust business shall be deposited in a specially designated account or accounts, shall not be commingled with any funds of the credit union and shall remain on deposit until disbursed or invested in accordance with powers and duties of the credit union in its capacity as such fiduciary.

Source: The provisions of this §91.6011 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6012. Compensation, Gifts, and Bequests.

A credit union may not permit its directors, officers, or employees to retain any compensation for acting as co-fiduciary with the credit union in the administration of a fiduciary account, except with the specific approval of the board of directors. In addition, a credit union may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the director, officer, or employee or is specifically approved by the board of directors.

Source: The provisions of this §91.6012 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6013. Bond Coverage.

A credit union is required to maintain a bond for protection and indemnity of members, in reasonable amounts against dishonesty, fraud, defalcation, forgery, theft, embezzlement, and other similar insurable losses with an insurance or surety company authorized to do business in this state. Coverage against such losses shall include all agents who do not otherwise provide protection and indemnity for the credit union, directors, officers, and employees of the credit union acting independently or in collusion or combination with any person or persons whether or not they draw salary or compensation.

Source: The provisions of this §91.6013 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6014. Errors and Omissions Insurance.

The credit union shall procure errors and omission insurance of at least five hundred thousand dollars.

Source: The provisions of this §91.6014 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

§91.6015. Litigation File.

A credit union shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

Source: The provisions of this §91.6015 adopted to be effective August 10, 2003, 28 TexReg 6271; readopted to be effective November 11, 2007, 32 TexReg 7936; reviewed and readopted to be effective October 24, 2011, 36 TexReg 7570.

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Subchapter P. Other Forms of Equity Capital

§91.7000. Certificates of Indebtedness.

(a) General. No credit union may issue certificates of indebtedness pursuant to this section or amend the terms of such certificates unless it has obtained a written letter from the commissioner stating that the commissioner does not object (“non-objection letter”). All requirements of the provisions of this section must be met before a non-objection letter will be issued.

(b) Form of application; supporting information. Applications must be in the form prescribed by the commissioner and shall include all information and exhibits required by the application instructions.

(c) Requirements as to certificates. Certificates of Indebtedness issued pursuant to this section shall meet all of the following requirements:

(1) Form of certificate. Each certificate evidencing subordinated debt issued by a credit union pursuant to this section shall:

(A) Bear on its face, in bold-face type, the following legends:

(i) “This certificate is not a share account or deposit and it is not insured by the United States or any other insuring organization or fund”; and

(ii) “This certificate is not eligible for purchase by any credit union or a credit union service organization thereof without the prior written approval of the Credit Union Commissioner of the State of Texas.”

(B) Clearly state that the certificate –

(i) Is subordinated to all other claims of the credit union’s creditors;

(ii) Is totally unsecured; and

(iii) May not be used as collateral for any loan by the issuing credit union.

(C) Shall include within its terms the right of the issuing credit union to prepay the obligation, which shall, at a minimum, include the right to prepay any amount without premium or penalty any time during the fifteen months prior to the maturity date;

(D) Shall contain the following statement:

“Notwithstanding anything to the contrary in this certificate (or in any related documents); (i) if the NCUA or other insuring organization shall be appointed liquidating agent for the issuer of this certificate (“the issuer”) and in its capacity as such shall cause the issuer to merge with or into another credit union, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another credit union or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more credit unions, the NCUA or other insuring organization shall have no obligation, either in its capacity as liquidating agent or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligations represented by this certificate in whole or in part by any credit union or credit unions which results from any such merger or which has purchased or otherwise acquired from the NCUA or other insuring organization as liquidating agent for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the NCUA or insuring organization, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a credit union with or into which the issuer may have been merged, as described in this paragraph (A), and/or by one or more credit unions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the NCUA or other insuring organization as liquidating agent for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in

accordance with the procedures and priorities set forth in any applicable law. (ii) In the event that the obligation represented by this certificate is assumed in full by another credit union, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the NCUA or insuring organization assume all or a portion of the liabilities of the issuer, and payment or provision for shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, than any default caused by the appointment of a liquidating agent for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (iii) This certificate is not eligible to be purchased or held by any credit union or credit union service organization thereof. The issuer of this certificate may not recognize on its transfer books any transfer made to a credit union or any credit union service organization thereof and will not be obligated to make any payments of principal or interest on this certificate if the owner of this certificate is a credit union or any credit union service organization thereof.”

(2) Limitations as to term and prepayment.

(A) No certificate of indebtedness issued by a credit union pursuant to this section shall have an original period to maturity of less than seven years. During the first six years that such a certificate is outstanding, the total of all required sinking fund payments, other required prepayments, and required reserve allocations with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount or original redemption price, thereof multiplied by a fraction, the numerator of which is the number of years that have elapsed since the issuance of the certificate and the denominator of which is the number of years covered by the original period to maturity.

(B) No voluntary prepayment of principal shall be made and no payment of principal shall be accelerated without the approval of the commissioner if the credit union’s net worth ratio is below 6% or, if after giving effect to such payment, the credit union’s net worth ratio would fall below 6%.

(d) Offering circular. The credit union shall submit the proposed offering circular to the Department. The offering circular must state the following in bold print:

“These certificates have not been approved by the Texas Credit Union Department nor has the Texas Credit Union Department approved this offering circular.”

(e) Supervisory objection. Generally, the commissioner will not issue a non-objection letter where:

(1) The proposed issue fails to transfer risk away from the National Credit Union Share Insurance Fund or other insuring organization and onto the certificate holders.

(2) Information submitted in connection with the application or otherwise available to the Department indicates that the credit union will not be able to service the proposed debt. Evaluation of the issuer’s ability to service debt should be prospective, based upon the issuer’s business plan.

(3) The ratio of subordinated debt included as equity capital to the credit union’s net worth requirements exceeds one-third, after giving effect to the proposed issue.

(4) The proposed deployment of the proceeds of the proposed issue is contrary to the credit union’s business plan, is unrealistic in its assumptions, or is inconsistent with the principles of safety and soundness.

(5) The credit union has failed to comply with the terms and conditions imposed upon previous subordinated debt issuances, or has failed to comply with any outstanding enforcement action, written agreement or any other significant supervisory requirement.

(f) Additional requirements. The commissioner may impose on the credit union such requirements or conditions with regard to certificates or the offering or issuance thereof as the commissioner may deem necessary or desirable for the protection of purchasers, the credit union, the National Credit Union Share Insurance Fund, or other insuring organization, as the case may be.

(g) Limitation on offering period. Following the date of the issuance of a non-objection letter, the credit union shall have an offering period of not more than one year in which to complete the sale of the certificates of indebtedness issued pursuant to this section. The commissioner may in his discretion extend such offering period if a written request showing good cause for such extension is filed with the Department not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) Policies and Procedures. Before any offers or sales of the certificates are made on the premises of the credit union or its credit union service organization, the credit union shall submit to the Department a set of policies and procedures for such sale of certificates that is satisfactory to the Department.

(i) Records. A credit union shall establish and maintain certificate of indebtedness documentation practices and records that demonstrate the credit union appropriately administers and monitors certificate of indebtedness-related activities. The credit union's records should adequately evidence ownership, balances, and all transactions involving each certificate. The credit union may maintain records on certificate of indebtedness activities in any format that is consistent with standard business practices.

(j) Disclosures.

(1) In connection with the purchase of a certificate of indebtedness by a person from the issuing credit union or its credit union service organization, the credit union and/or the credit union service organization must disclose to the person that:

(A) The certificate of indebtedness is not a share or deposit;

(B) The certificate of indebtedness is not insured by the National Credit Union Share Insurance Fund or any other insuring organization;

(C) There is investment risk associated with the certificate of indebtedness, including the possible loss of value; and

(D) The credit union may not condition an extension of credit on a person's purchase of a certificate of indebtedness.

(2) The disclosures required by paragraph (1) above must be provided orally and in writing before the completion of the sale of a certificate of indebtedness. If the sale of a certificate of indebtedness is conducted by telephone, the credit union may provide the written disclosure required by paragraph (1) by mail within three business days beginning the first business day after the sale, solicitation, or offer.

(3) A credit union may provide the written disclosures required by paragraph (1) through electronic media instead of on paper, if the person affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the person may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(4) The disclosures provided shall be conspicuous and designed to call attention to the nature and significance of the information provided.

(k) Sales Activities. A credit union must, to the extent practicable:

(1) Keep the area where the credit union conducts transactions involving certificate of indebtedness physically segregated from areas where shares and deposits are routinely accepted from members;

(2) Identify the area where certificate of indebtedness activities occur; and

(3) Clearly delineate and distinguish those areas from the areas where the credit union's share- and deposit-taking activities occur.

(l) Referrals. Any person who accepts deposits from members in an area where such transactions are routinely conducted in a credit union may refer a member who seeks to purchase a certificate of indebtedness to a qualified person who sells that product only if the person making the referral receives no additional compensation for making the referral.

(m) Reports. Within 30 days after completion of the sale of the subordinated debt issued pursuant to this section, the credit union shall transmit a written report to the Department stating the number of purchases, the total dollar amount of certificates sold, and the amount of net proceeds received by the credit union. The credit union's report shall clearly state the amount of subordinated debt, net of all expenses that the credit union intends to have counted as equity capital. In addition, the credit union, shall submit to the Department, certification of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the certificates.

(n) Equity capital. When a certificate of indebtedness has a remaining maturity of 5 years, the amount of the certificates that may be considered equity capital shall be reduced by a minimum of 20% of the original amount of the certificate per year. The equity capital shall be reduced by a constant monthly amortization to ensure the recognition of subordinated debt is fully amortized when the certificate matures or is prepaid.

(o) Prohibited practices.

(1) A credit union may not engage in any practice or use any advertisement at any office of, or on behalf of, a credit union that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(A) the fact that a certificate of indebtedness a credit union sells or offers for sale is not insured by the National Credit Union Share Insurance Fund or other insuring organization;

(B) the fact that there is an investment risk, including the potential that principal may be lost and that the certificate may decline in value; or

(C) the fact that the approval of an extension of credit to a person by the credit union or credit union service organization may not be conditioned on the purchase of a certificate of indebtedness from the credit union or credit union service organization.

(2) No credit union shall directly or indirectly:

(A) employ any device, scheme or artifice to defraud,

(B) make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(C) engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any certificate of indebtedness.

Source: The provisions of this §91.7000 adopted to be effective March 14, 2004, 29 TexReg 2638; reviewed and readopted to be effective June 23, 2008, 33 TexReg 5352.

Subchapter Q. Access to Confidential Information

§91.8000. Discovery of Confidential Information.

(a) Policy. The legislature has determined that certain information is confidential and, with limited exceptions, should not be disclosed. See Texas Finance Code, §126.002. Non-disclosure under this section protects the stability of credit unions by preventing disclosures that could adversely impact the institutions. Inappropriate disclosures can result in substantial harm to credit unions and to those persons and entities (including other financial institutions) that have relationships with them. For example, the department may criticize a credit union in an examination report for a financial weakness that does not currently threaten the solvency of the credit union. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of a "run," short-term liquidity problems, or volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the credit union. These failures lead to reduced access to credit and greater risk to depositors. Further, since specific loans may be criticized in an examination report, confidentiality of the information protects the financial privacy of borrowers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the credit union and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

(b) Disclosure prohibited. Pursuant to Finance Code §126.002, the department has an absolute privilege against disclosure of its confidential information. Discovery of confidential information from a person subject to §126.002 must comply with subsection (c) of this section. Only a person to whom confidential information has been released pursuant to §126.002 or this rule may disclose that information to another, and only in accordance with that section and this rule.

(c) Discovery of confidential information. A credit union, governmental agency, credit union service organization, service provider, or insuring organization that receives a subpoena or other form of discovery for the release of information that is confidential under §126.002 of the Act shall promptly:

- (1) notify the department of the request;
- (2) provide the department with a copy of the discovery documentation and, if requested by the department, a copy of the requested information; and
- (3) move for a protective order, or its equivalent under applicable rules of procedure.

In addition, prior to the release of confidential information, such credit union, governmental agency, credit union service organization, service provider, or insuring organization must obtain a ruling on its motion in accordance with this section. Confidential information may be released only pursuant to a protective order, or its equivalent, in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

- (A) the party seeking the information has a substantial need for the information;
- (B) the information is directly relevant to the legal dispute in issue; and
- (C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

(d) Discretionary filings by department. On receipt of notice under subsection (c) of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this section.

(e) Motion for protective order, or equivalent, and in camera inspection. The movant shall ask the court to enter an order in accordance with this section regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the order shall move for an in camera inspection of the pertinent information. Until subject to a protective order, or its equivalent, confidential information may not be released, and, if necessary, the party seeking an order shall request the court officer to deny discovery of such confidential information.

(f) Protective order or equivalent. An order obtained pursuant to the terms of this section must:

(1) specifically bind each party to the litigation, including one who becomes a party to the suit after the order is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the order;

(2) describe in general terms the confidential information to be produced;

(3) state substantially the following in the body of the order:

(A) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the order in whole or part;

(B) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the order and must insure that disclosure is limited to those persons specified in the order;

(C) confidential information subject to the order and all information derived there from may be used only for the purposes of the trial, appeal, or other proceedings in the case in which it is produced;

(D) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the term of the protective order;

(E) confidential information produced under the order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order;

(i) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under the attorney's supervision;

(ii) to a witness or potential witness in the case;

(iii) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the order and the party employing the expert agrees to be responsible for the compliance by its expert with this confidentiality obligation; and

(iv) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(iv) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(F) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(G) a transcript, including a deposition transcript, that may include confidential information subject to non-disclosure is subject to the order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(H) Upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return all copies of every document subject to the order for which the counsel is custodian to the party that produced the confidential information; and

(I) Production of documents subject to the order does not waive a claim of privilege or right to withhold the documents from a person not subject to the order.

(4) Paragraph (3)(A), (B) and (E) - (H) of this subsection are subject to modification by the court for good cause before the conclusion of the proceeding, after giving the department notice and an opportunity to appear.

Source: The provisions of this §91.8000 adopted to be effective March 14, 2004, 29 TexReg 2638; reviewed and readopted to be effective June 23, 2008, 33 TexReg 5352, amended to be effective July 12, 2009, 34 TexReg 4513.

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