CREDIT UNION DEPARTMENT

DATE: **July 23, 2013**

TO: **State Chartered Credit Unions**

SUBJECT: **Change 34 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:

REMOVE PAGES	INSERT	AMENDMENTS OR NEW RULES
Rules for CUs Cover	Rules for CUs Cover	Updated Cover
91-1 thru 91-10	91-1 thru 91-10	Readopted Rules 91.101, 91.103, 91.104, 91.105, 91.110, 91.120, 91.121 and 91.125 with no changes
91-11 thru 91-18	91-11 thru 91-18	Readopted Rules 91.201, 91.202, 91.203, 91.205, 91.206, 91.208, 91.209 and 91.210 with no changes
91-73 thru 91-80	91-73 thru 91-80	Readopted Rules 91.1003, 91.1005, 91.1006, 91.1007 and 91.1008 with no changes
91-83 thru 91-84	91-83 thru 91-84	Readopted Rules 91.3001 and 91.3002 with no changes
97-11 thru 97-12	97-11 thru 97-12	Amended Rule 97.207
151-1 thru 151-4	151-1 thru 151-4	Readopted Interpretations to Chapter 151.1, 151.2, 151.3, 151.4, 151.5, 151.6, 151.7 and 151.8 with no changes
153-1 thru 153-20	153-1 thru 153-20	Readopted Interpretations to Chapter 153.1, 153.2, 153.3, 153.4, 153.5, 153.7, 153.8, 153.9, 153.10, 153.11, 153.12, 153.13, 153.14, 153.15, 153.16, 153.17, 153.18, 153.20, 153.22, 153.24, 153.25, 153.41, 153.51, 153.82, 153.84, 153.85, 153.86, 153.87, 153.88, 153.91, 153.92, 153.93, 153.94, 153.95 and 153.96 with no changes

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.

RULES FOR CREDIT UNIONS

adopted by the

CREDIT UNION COMMISSION

DISCLAIMER

Please be advised that we must disclaim perfect accuracy in providing this material. Although we strive to present totally accurate information and offer this material to assist you, you are solely responsible for any use of it that you may make.

The official copy of the Texas Administrative Code is maintained by the Secretary of State for the State of Texas and is available on their website at *http://sos.state.tx.us/tac/index.shtml*.

CHAPTER 91

Subchapter A. General Rules

§91.101. Definitions and Interpretations.

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

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

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

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

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

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

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

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

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

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

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

(i) whether the members pay dues,

(ii) whether the members participate in furtherance of the goals of the association,

(iii) whether the members have voting rights,

(iv) whether there is a membership list,

(v) whether the association sponsors activities,

(vi) what the association's membership eligibility requirements are, and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who

(i) live in,

(ii) worship in,

(iii) attend school in, or

(iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

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

(9) Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income-producing property or convert the use of income-producing property to a different or expanded use from its former use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income-producing property that do not change its use.

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

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

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

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

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

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

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

(17) Loan-to-value ratio--the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

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

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

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and acting in their own best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U. S. Office of Management and Budget.

(22) Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's

Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) Principal office--the home office of a credit union.

(28) Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(29) Real estate or real property—an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(30) Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(31) Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(32) Resident of this state--a person physically located in, living in or employed in the state of Texas.

(33) Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(34) Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(35) Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(37) Title or 7 TAC--Title 7, Part VI of the Texas Administrative Code [(TAC)], Banking and Securities, which contains all of the department's rules.

(38) Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(39) Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(40) Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

Source: The provisions of this §91.101 adopted to be effective November 13, 2000, 25 TexReg 11277; amended to be effective January 7, 2004, 29 TexReg 81; amended to be effective November 14, 2004, 29 TexReg 10253; amended to be effective November 16, 2005, 30 TexReg 7432; reviewed and amended to be effective November 8, 2009, 34 TexReg 7620; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.103. Public Notice of Department Decisions.

The commissioner shall cause notice of final actions taken by the department on certain activities to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications within 30 days of the action becoming final. The activities covered by this requirement are:

(1) an application for incorporation under Texas Finance Code §122.001;

(2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;

(3) a request for an amendment to a credit union's bylaws for the expansion of its field of membership under Texas Finance Code §122.011;

(4) an application for merger or consolidation under Texas Finance Code §122.152;

(5) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013; and

(6) an application for conversion of a credit union's certificate of incorporation under Texas Finance Code §§122.201, 122.202, 122.203, or 91.1007 of this chapter (relating to conversion to a Mutual Savings Institution).

Source: The provisions of this §91.103 adopted to be effective May 10, 1998, 23 TexReg 4567; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; amended to be effective November 8, 2009, 34 TexReg 7623; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.104. Public Notice and Comment on Certain Applications.

(a) Upon receipt of a complete application for authorization to be granted by the department, the commissioner shall cause notice of such application to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications at least 30 days prior to taking action on the request. The activities covered by this requirement are:

(1) an application for incorporation under Texas Finance Code §122.001;

(2) a request for an amendment to a credit union's articles of incorporation under Texas Finance Code §122.011;

(3) a request for an amendment to a credit union's bylaws for an expansion of its field of membership under Texas Finance Code §122.011;

(4) an application for merger or consolidation under Texas Finance Code §122.152;

(5) an application for conversion of a credit union's certificate of incorporation under Section 91.1007 of this chapter (relating to conversion to a mutual savings institution); and

(6) a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013.

(b) The commissioner may waive or delay notice of applications under subsection (a) of this section when a waiver or delay is in the public interest. The commissioner shall consider the welfare and stability of the affected credit union(s) in determining the public interest. If the commissioner determines that delaying public notice is in the public interest, the notice of application shall be published in each publication at the earliest feasible time.

Source: The provisions on this §91.104 adopted to be effective May 11, 2000, 25 TexReg 3943; readopted to be effective November 19, 2001, 26 TexReg 9934; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7623; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.105. Acceptance of Other Application Forms.

Notwithstanding other requirements of this chapter, if another state or federal regulator's application and forms provide all the information required by Texas law, the commissioner may accept those forms. This does not limit the commissioner's power to require additional information necessary to complete an application or other form.

Source: The provisions on this §91.105 adopted to be effective May 11, 2000, 25 TexReg 3943; readopted to be effective December 18, 2003, 29 TexReg. 235; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.110. Protest Procedures for Applications.

A protestant to an application for authorization to be granted by the commissioner must file a written notice of protest, in such form as the commissioner may prescribe, within 30 days of the date that notice of the application is published in either the Texas Register or the department newsletter, whichever is later. The notice of protest must provide all information that the protestant wishes the commissioner to consider in evaluating the application.

Source: The provisions on this §91.110 adopted to be effective May 11, 2000, 25 TexReg 3943; 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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.115. Safety at Unmanned Teller Machines.

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

(1) Access area – a paved walkway or sidewalk that is within 50 feet of an unmanned teller machine. The term does not include a public right-of-way or any structure, sidewalk, facility, or appurtenance incidental to the right-of-way.

(2) Access device – has the meaning assigned by Regulation E (12 CFR Section 205.2), as amended, adopted under the Electronic Fund Transfer Act (15 USC Section 1693 et seq.), as amended.

(3) Candle power – the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured. For the purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

(4) Control – the authority to determine how, when, and by whom an access area or defined parking areas may be used, maintained, lighted, and landscaped.

(5) Member – an individual to whom an access device is issued for personal, family, or household use.

(6) Defined parking area – the portion of a parking area open for unmanned teller machine member parking that is contiguous to an access area, is regularly, principally, and lawfully used during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise for parking by members using the machine, and is owned or leased by the owner or operator of the machine or owned or controlled by a person leasing the machine site to the owner or operator of the machine. The term does not include:

(A) a parking area that is physically closed or on which one or more conspicuous signs indicate that the area is closed; or

(B) a level of a multiple-level parking area other than the level considered by the operator of the unmanned teller machine to be the most directly accessible to a member.

(7) Operator – the person primarily responsible for the operation of an unmanned teller machine.

(8) Owner – a person having the right to determine which financial institutions are permitted to use or participate in the use of an unmanned teller machine.

(9) Unmanned teller machine – a machine, other than a telephone, capable of being operated solely by a member to communicate to a credit union:

(A) a request to withdraw money from the member's account directly or under a line of credit previously authorized by the credit union for the member;

(B) an instruction to deposit money in the member's account with the credit union;

(C) an instruction to transfer money between one or more accounts maintained by the member with the credit union;

(D) an instruction to apply money against an indebtedness of the member to the credit union; or

(E) a request for information concerning the balance of the account of the member with the credit union.

(b) Safety evaluations.

(1) The credit union owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually, unless the machine is exempted under the Finance Code §59.302.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The credit union owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the credit union owner or operator of the machine.

(c) Notice.

(1) A credit union issuer of access devices shall furnish its members with a notice of basic safety precautions that each member should employ while using an unmanned teller machine. The notice shall be delivered personally or mailed to each member, whose mailing address is in this state, when an access device is issued, renewed or replaced.

(2) Content. The notice of basic safety precautions required by this section must be provided in written form which can be retained by the member and may include recommendations or advice regarding:

(A) security at walk-up or drive-up unmanned teller machines;

(B) protection of code or personal identification numbers;

(C) procedures for lost or stolen access devices;

(D) reaction to suspicious circumstances;

(E) safekeeping and disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(F) the inadvisability of surrendering information about the member's access device over the telephone;

(G) safeguarding and protecting the member's access device, such as a recommendation that the member treat the access device as if it was cash;

(H) protection against unmanned teller machine fraud, such as a recommendation that the member compare unmanned teller machine receipts against the member's monthly statement; and

(I) other recommendations that the credit union reasonably believes are appropriate to facilitate the security of its unmanned teller machine users.

(d) Lease premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If a credit union owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the credit union shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(e) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance

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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

Subchapter B. Organization Procedures

§91.201. Incorporation Procedures.

(a) An application to incorporate a credit union shall be in writing and supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of incorporation.

(b) Business Plan. The application must include a business plan that covers three years and provides detailed explanations of actions that are proposed to accomplish the primary functions of the credit union. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will maintain adequate capital to support its operations. Specifically the plan must:

(1) Describe the credit union's business, including the products, member services, and other activities;

(2) Provide quarterly pro forma financial information for the three years of operation, including annual totals for the Income Statement;

(3) Describe in detail all of the assumptions used to prepare the projected financial information;

(4) Discuss the capital goals and the means to achieve them;

(5) Discuss the overall marketing/advertising strategy to reach potential members;

(6) Discuss the credit union's strategy for obtaining required share and deposit insurance protection for its members' accounts; and

(7) Describe the economic forecast for the three years of the plan.

(c) The commissioner shall determine whether or not an application is complete within thirty days of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.

(d) Upon the determination that an application is complete, the commissioner shall make or cause to be made an investigation and examination of the facts concerning the applicant. It is essential that the investigation and examination confirm to the satisfaction of the commissioner that the proposed institution will have a reasonable opportunity to succeed.

(e) Proposed credit unions must investigate the possibility of an overlap with existing state or federal credit unions doing business in this state prior to submitting an application. When an overlap situation does arise, officials of the involved entities must attempt to resolve the overlap issue. Typically, an overlap will not be considered adverse to the overlapped credit union if:

(1) the group has fewer than 3000 primary potential members or the overlap is otherwise incidental in nature;

(2) the overlapped credit union does not object to the overlap;

(3) there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time; or

(4) a single occupational or associational based credit union overlaps a community chartered credit union.

(f) When the applicant and a credit union agree and/or the commissioner has determined that overlap protection is appropriate, an exclusionary clause will be included in the proposed field of membership for a period of 24 months from the date the proposed credit union commences business. The commissioner, for good cause shown, may extend this period for an additional 24 months.

(g) The commissioner may approve the application conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been met within the time specified in the approval order or any extension as set forth in Finance Code §122.006.

Source: The provisions of this §91.201 adopted to be effective May 11, 2000, 25 TexReg 3945; adopted to be effective January 7, 2004, 29 TexReg 82; amended to be effective November 14, 2004, 29 TexReg 10253; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.202. Bylaw and Articles of Incorporation Amendments.

(a) The Standard Bylaws for State Chartered Credit Unions ("Standard Bylaws"), approved by the commission on February 20, 2004, or as subsequently revised or amended, constitute the bylaws which shall be used by credit union incorporators.
(b) The commissioner is expressly authorized to approve deviations from and amendments to the standard bylaws, unless the deviation or amendment violates applicable law.
(c) Credit unions desiring to amend articles of incorporation or bylaws must submit a written application, in such form as the commissioner may prescribe. The application shall include the text of the amendment, the date that the board of directors adopted the amendment, a brief statement explaining the purpose of the amendment, information regarding the financial impact on the credit union if the amendment is approved, and any other information the commissioner may require to make a decision on the amendment.
(d) The commissioner shall determine whether or not an application is complete within thirty day of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.
(e) The commissioner does not need to provide notice as prescribed in §91.103 (relating to Public Notice of Department Decisions and §91.104 (relating to Public Notice and Comment on Certain Applications) for applications that apply for standard optional field of membership provisions (1), (2), (3), and (4) as contained in the Standard Bylaws "Appendix A".
(f) A credit union's board of directors may amend its bylaws to adopt any standard bylaw without approval by the commissioner provided: (1) the wording of the amendment is identical to the Standard Bylaws; and (2) the credit union submits a completed, fully executed Certification of Resolution of Amendment to Credit Union Bylaws ("Certification") to the commissioner. The commissioner will promptly acknowledge receipt of the Certification. The amendment will be effective as of the date the commissioner acknowledges receipt of the Certification.

Source: The provisions of this §91.202 adopted to be effective May 11, 2000, 25 TexReg 3945; amended to be effective March 14, 2004, 29 TexReg 2305, amended to be effective November 16, 2005, 30 TexReg 7433; reviewed and amended to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.203. Share and Deposit Insurance Requirements.

(a) All credit unions in the State of Texas shall obtain share insurance protection as provided in Chapter 95 of this title (pertaining to Share and Depositor Insurance Protection).
(b) With the approval of the commissioner, and if recognized by its insuring organization, a credit union may, from time to time as determined by its board of directors, issue uninsured membership shares which are subordinate to all other claims, including creditors, shareholders, and the insuring organization. The commissioner may approve the issuance of such accounts conditioned upon specific requirements being met.

Source: The provisions of this §91.203 adopted to be effective November 8, 2009, 34 TexReg 7624; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.205. Credit Union Name.

(a) Unless a name change has been approved by the commissioner in accordance with the Act and these rules, a credit union shall do business under the name in which its certificate of incorporation was issued.
(b) Subject to the requirements of this rule, a credit union may adopt an assumed name. The credit union's official name, however, must be used in all official or legal communications or documents, which includes account and membership agreements, loan contracts, title documents(except for vehicle titles, which may also be under the credit union's assumed name), account statements, checks, drafts, and correspondence with the Department or the National Credit Union Administration. The assumed name may also be used in those materials so long as it is identified as such (e.g. Generic Credit Union dba GCU). Further, a credit union using an assumed name shall clearly disclose the credit union's official name when the assumed name is used on any signs, advertising, mailings, or similar materials.
(c) A credit union shall not use any name other than its official name until it has received a certificate of authority to use an assumed business name from the commissioner and has registered the designation with the Secretary of State and the appropriate county clerk.
(d) The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business with an office in this state.
(e) Credit union officials are responsible for complying with state and federal law applicable to corporate and assumed names.
(f) Before using an assumed name, a credit union shall take reasonable steps to ensure that use of the name will not cause a reasonable person to believe the credit union's different facilities are different credit unions or to believe that shares or deposits in one facility are separately insured from those of another facility.

Source: The provisions of this §91.205 adopted to be effective May 11, 2000, 25 TexReg 3947; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective November 16, 2005, 30 TexReg 7433; reviewed and amended to be effective November 8, 2009, 34 TexReg 7626; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.206. Underserved Area Credit Unions – Secondary Capital Accounts.

A credit union that has been approved for a designation as a Underserved Area Credit Union pursuant to Section 122.014, Finance Code may issue secondary capital accounts to members or nonmembers of the credit union on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall file an application for approval with the commissioner. The application shall be supported by a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts, along with such other information and data as the commissioner may require.

(2) The secondary capital account must be established as an uninsured secondary capital account or other form of non-share account, and shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(3) The secondary capital account must mature no earlier than five years.

(4) The secondary capital account shall not be redeemable prior to maturity.

(5) The secondary capital account holder's claim against the credit union must be subordinated to all other claims, including those of shareholders, creditors and the credit union's insuring organization.

(6) Funds deposited into the secondary capital account, including interest accrued and paid into the capital account, must be available to cover the credit union's realized operating losses that exceed its net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall not restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the secondary capital account holder or into a separate account from which the secondary capital account holder may make withdrawals. Losses realized shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(7) The secondary capital account may not be pledged or provided by the account holder as security on a loan or other obligation with the credit union or any other party.

(8) In the event of merger or other voluntary dissolution of the credit union, other than merger into another Underserved Area designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account holder.

(9) A secondary capital account contract agreement must be executed by an authorized representative of the account holder and the credit union. The agreement must set forth all of the terms and conditions of this section and contains a disclosure and acknowledgement by the account holder that the secondary capital account is not redeemable, will not be insured, may be used to cover operating losses of the credit union and not be replaced or replenished, and is subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the credit union's insuring organization. All such contract agreements must be retained by the credit union for the term of the agreement.

(10) In the event the credit union is classified as "critically under capitalized", "marginally capitalized", "minimally capitalized", "moderately capitalized" or "uncapitalized", or the credit union has failed to undertake any mandatory supervisory action, the commissioner or any entity insuring the accounts of the credit union, may prohibit payment of principal, dividends or interest on the credit union's secondary capital accounts in accordance with powers and procedures

granted under state or federal laws, as applicable. Any such unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

(11) Credit unions with secondary capital accounts shall record the funds on its balance sheet in an equity account entitled "uninsured secondary capital accounts". The capital value of the accounts shall be kept in accordance with generally accepted accounting principles.

Source: The provisions of this §91.206 adopted to be effective March 14, 2004, 29 TexReg 2305; readopted to be effective June 20, 2005, 30 TexReg 3882; reviewed and amended to be effective November 8, 2009, 34 TexReg 7625; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.208. Notice of Known or Suspected Criminal Violations.

(a) Each credit union shall exercise reasonable due diligence to discover, investigate, and report theft, embezzlement, and other types of criminal activity affecting the credit union. The credit union shall provide written notice to the Department within 30 calendar days for any of the following known or suspected criminal violations:

(1) Insider abuse involving any amount,

(2) Other transactions, including potential money laundering or violations of the Bank Secrecy Act, aggregating $5,000 or more,

(3) Losses resulting from robbery or burglary.

(b) When applicable, a credit union may meet the reporting requirements of this section by providing the Department a copy of a Suspicious Activity Report prepared in accordance with the NCUA Rules and Regulations 12 C.F.R. §748.1(c). The timeframe for reporting the activity to the Department in this manner may be extended up to 60 days when authorized by the regulation.

Source: The provisions of this §91.208 adopted to be effective July 12, 2009, 34 TexReg 4512; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.209. Call Reports and Other Information Requests.

(a) Each credit union shall file a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of $100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit

union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty $50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

Source: The provisions of this §91.209 adopted to be effective August 9, 1998, 23 TexReg 7767; amended to be effective April 7, 2002, 27 TexReg 2434; amended to be effective November 16, 2005, 30 TexReg 7434; amended to be effective July 12, 2009, 34 TexReg 4512; reviewed and amended to be effective July 11, 2010, 35 TexReg 1898; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.210. Foreign Credit Unions.

(a) Definitions. (1) Foreign credit union -- a credit union that is not chartered or otherwise organized under the laws of this state or the United States. (2) Local service area – an area that is within reasonable proximity of a foreign credit union's office, allowing members to be realistically served from that office.

(b) Application. Prior to commencing business in this state, a foreign credit union is required to file a written application supported by such information and data as the commissioner may require to make the findings necessary for the issuance of a certificate of authority pursuant to Finance Code §122.013.

(c) Approval. The application shall not be approved unless the commissioner finds that the applicant:

(1) is acting in good faith and the application does not contain a material misrepresentation;

(2) is financially sound and has no supervisory problems;

(3) will conduct its operations in the State of Texas in accordance with the intent and purpose of the Act and Commission rules;

(4) has provided evidence of compliance with the Finance Code, §201.102 concerning registering with the secretary of state to do business in Texas;

(5) has share and deposit insurance equivalent to that required for credit unions organized under the Act;

(6) has paid a permit fee of $500 for each and every branch office proposed to be established in the State of Texas;

(7) has fidelity bond coverage satisfactory to the commissioner; and

(8) has provided all other information the commissioner may require.

(d) Compliance with Texas law. A credit union chartered by another state shall comply with all applicable Texas laws, including those laws regarding home equity lending, loan interest rates, and consumer protection, to the same extent that those laws apply to a Texas credit union.

(e) Federal treaties. If a treaty or agreement exists between the United States and a foreign country which requires the commissioner to permit a foreign credit union to operate a branch in this state and the commissioner determines that the applicant has substantially the same characteristics as a credit union organized under the Act, then the applicant must comply with all provisions of the Act and commission rules, unless otherwise permitted by this section.

(f) Financial statements. Each foreign credit union that is operating a branch office within the State of Texas shall furnish to the commissioner a copy of its annual audited financial statements, if any, or other statements of financial conditions as the commissioner may require.

(g) Examinations. The commissioner is authorized to examine the books and records of any branch office operated in the State of Texas by a foreign credit union. The costs of examination, as prescribed in §97.113(d) of this title (relating to Supplemental Examinations), must be fully borne by the foreign credit union. The supplemental examination fee may be waived or reduced at the discretion of the commissioner.

(h) Agreements with other regulators. The commissioner shall enter into supervisory agreements with the foreign credit union regulators and, as necessary, the foreign credit unions, as authorized by Finance Code §15.411, to resolve any conflict of laws and to specify the manner in which the examination, supervision, and application processes will be coordinated with the regulators. The agreement may also prescribe the applicable laws governing the powers and authorities of the foreign branch and may address, but are not limited to, corporate governance and operational matters. The agreement, however, shall not limit the jurisdiction or authority of the commissioner to examine, supervise and regulate a foreign credit union that is operating or seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.

(i) Field of membership. A certificate of authority to do business in this state is specifically issued to allow a foreign credit union to provide services to its existing field of membership. However, the commissioner may approve a foreign credit union's request to expand its field of membership to include groups with a community of interest that are within the foreign credit union's local service area if it is organized in a state or country that allows a credit union organized under the act to expand its field of membership to at least the same extent. After being satisfied that the group is within the foreign credit union local service area, the commissioner shall use the same criteria and the same procedures as used when a Texas credit union seeks to expand its field of membership. The commissioner shall make a reasonable effort to coordinate this determination with the foreign credit union's primary regulator to assure that each agency's material interests, authorities and responsibilities are fulfilled.

(j) Location of Group. For the purposes of a field of membership expansion, the group as a whole will be considered to be within the local service area when:

(1) A majority of the persons in the group live, work, or gather regularly within the local service area;

(2) The group's headquarters is located within the local service area; or

(3) The group's "paid from" or "supervised from" location is within the local service area.

(k) Prohibition against share/deposit production offices. A foreign credit union may not use its certificate of authority primarily for the purpose of deposit production. The foreign credit union is expected to reasonably help meet the credit needs of the groups in Texas that are served by the credit union. If the Commissioner determines that the foreign credit union's level of lending in Texas relative to the deposits from Texas members is less than half the average of

total loans relative to total deposits for all credit unions domiciled in Texas, the credit union will not be permitted to further expand its field of membership nor open additional offices in Texas.

(l) Enforcement; penalty. The commissioner has grounds to issue a cease and desist order to an officer, employee, director, and/or the foreign credit union itself, if the commissioner determines from examination or other credible evidence that the credit union has violated or is violating any applicable Texas law or rules of the commission. If the foreign credit union does not comply with an order, the commissioner may assess an administrative penalty as authorized by §122.260, Finance Code, as well as suspend or revoke the certificate of authority.

Source: The provisions of this §91.210 adopted to be effective February 8, 2001, 26 TexReg 1131; amended to be effective June 8, 2003, 28 TexReg 4410; 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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

Subchapter J. Changes in Corporate Status

§91.1003. Mergers/Consolidations.

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

(1) Acquirer credit union - The credit union that will continue in operation after the merger/consolidation.

(2) Acquiree credit union - The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) Merger inducement – A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

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

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

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

(2) the combined financial reports of the two or more credit unions;

(3) an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

(4) an explanation of any proposed adjustments to the members' shares, or provisions for reserves, dividends, or undivided profits;

(5) a summary of the products and services proposed to be available to the members of the acquirer credit union, with an explanation of any changes from the current products and services provided to the members;

(6) a summary of the advantages and disadvantages of the merger/consolidation;

(7) the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(8) any other items deemed critical to the merger/consolidation agreement by the boards of directors.

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

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

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

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

(C) the proposed Notice of Special Meeting of the members;

(D) a copy of the ballot form to be sent to the members;

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

(F) if the acquiree credit union has $65.2 million or more in assets on its latest call report, a statement as to whether the transaction is subject to the Hart-Scott Rodino Act premerger notification filing requirements; and

(G) a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the acquirer credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

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

(f) Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval.

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

(A) the financial condition of the acquirer credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the acquirer credit union after merger/consolidation are proposed to be substantially the same as those of the acquiree and acquirer credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

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

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

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

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

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

(C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner;

(D) provide the name and location of the acquirer credit union;

(E) specify the methods permitted for casting votes; and

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

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree credit union will be canceled.

Source: The provisions of this §91.1003 adopted to be effective May 11, 1998, 23 TexReg 4568; readopted to be effective November 19, 2001, 26 TexReg 9934; amended to be effective November 16, 2005, 30 TexReg 7434; amended to be effective November 11, 2007, 32 TexReg 7924; reviewed and amended to be effective November 8, 2009, 34 TexReg 7628; reviewed and readopted to be effective June June 24, 2013, 38 TexReg 4392.

§91.1005. Conversion to a Texas Credit Union.

(a) Authority to convert. A federal credit union or an out of state credit union is authorized to convert to a credit union incorporated under the laws of this state by Section 122.203 of the Act.

(b) Requirements for conversion. A credit union wishing to convert to a credit union incorporated under the laws of this state shall comply with the following requirements:

(1) Submit a complete application on a form and in a manner prescribed by the commissioner;

(2) Furnish evidence that the current federal or state regulatory agency having jurisdiction over the applicant has no preliminary objection to the conversion plan;

(3) Submit to a conversion examination by the department and pay the supplemental examination fee prescribed in Section 97.113 of this Title (relating to Fees and Charges). The commissioner may waive the examination or the fee, upon finding good cause;

(4) Furnish evidence confirming that the applicant has complied with all applicable requirements of and has completed the conversion in a manner satisfactory to the insuring organization and the current federal or state regulatory agency; and

(5) Furnish evidence that the applicant has established or will relocate its principal place of business in a specific location in the State of Texas.

(c) Approval. The commissioner shall approve the conversion once the conditions required by this section have been met and the commissioner finds that the applicant: (1) is financially sound; (2) has no material supervisory problems; and (3) can reasonably be expected to conduct its operations in a safe and sound manner and in accordance with the laws of this state. The commissioner may approve the conversion conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been met.

(d) Effective date. The conversion shall become effective immediately upon the issuance of the certificate of incorporation or on a stipulated date within 90 days of the conversion approval. On request and for good cause shown, the commissioner may grant a reasonable extension of the effective date.

Source: The provisions of this §91.1005 adopted to be effective July 2, 2006, 31 TexReg 5076; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.1006. Conversions to a Federal or Out-of-State Credit Union.

(a) Authority to Convert. A credit union organized under the laws of this state is authorized to convert to a federal credit union or an out-of-state credit union by Sections 122.201 and 122.202 of the Act.

(b) Requirements for Conversion. A credit union wishing to convert to a federal credit union or an out-of-state credit union shall comply with the following requirements:

(1) Furnish evidence to the department that a conversion proposal has been approved by a two-thirds vote of the board of directors;

(2) Submit copies of all filings made with any state or federal regulatory agency and insuring organization with jurisdiction over any aspect of the conversion process;

(3) Furnish evidence confirming that the insuring organization and the acquiring state or federal regulatory agency have no preliminary objections to the plan;

(4) Submit a vote certification as required by Section 91.1008(c) of this chapter showing that the conversion proposal was approved by an affirmative vote of a majority of the eligible members of the credit union voting; and

(5) Furnish written evidence confirming that the credit union has met all of the conversion requirements of the insuring organization and the acquiring state or federal regulatory agency.

(c) Approval. The commissioner shall approve the conversion if all of the conditions required by this section have been met, unless the commissioner determines the conversion is being made to circumvent a pending supervisory action that is about to be or has been initiated by the commissioner because of a concern over the safety and soundness of the credit union.

(d) Effective Date. Once the commissioner has approved the conversion, it shall become effective upon the issuance of a charter or certificate of incorporation from the acquiring state or federal regulatory agency.

Source: The provisions of this §91.1006 adopted to be effective July 2, 2006, 31 TexReg 5077; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 23, 2013, 38 TexReg 4392.

§91.1007. Conversion to a Mutual Savings Institution.

(a) Authority to convert. A credit union organized under the laws of this state is authorized to convert to a mutual savings bank or association by Section 123.003 of the Act.

(b) Requirements for conversion. A credit union that is considering converting to a mutual savings bank or association must comply with the following requirements:

(1) Preliminary communication with membership and department. At least thirty days prior to a final vote by the board of directors to formally adopt a conversion proposal, the credit union shall send notice to the department and each member advising that the board is considering a possible conversion to a mutual savings bank or association. The notice shall, at a minimum, contain the following information: (a) a prominent legend in bold-face type that advises members of a potential conversion; (b) the electronic availability of information related to a potential conversion; (c) a telephone number and e-mail address that members may use to request copies of the potential conversion information that is available by electronic means; (d) the ability of members to submit written comments on the potential conversion; and (e) a clear, concise, and impartial description of the potential conversion to be considered by the board.

(2) Information posted on Internet web site. The credit union shall post information related to a potential conversion on the credit union's principal Internet web site at least thirty days prior to a vote by the board of directors to adopt a proposal of conversion. The posted information shall, at a minimum, discuss:

(A) The business purposes that might be accomplished by a conversion;

(B) The differences between and similarities of a credit union and a mutual savings institution;

(C) An estimate of the anticipated conversion expenses;

(D) The methods by which a member may request a copy of the posted information;

(E) The method and timeline for members to submit written comments on the potential conversion; and

(F) The process that will be followed if the board formally adopts a conversion proposal.

(3) Written comments from members. The board shall provide members a reasonable opportunity to submit written comments relating to a potential conversion. The board may hold a special meeting to receive member input regarding the potential conversion. It is within the board's discretion to determine the type, number, duration, and location of any special meeting(s). Before taking a final vote on a conversion proposal, the board should consider all written comments and any other member input received at any special meeting.

(4) Adoption of a conversion proposal by the board. Subsequent to the written comment period, the credit union may adopt, by the affirmative vote of at least two-thirds of the members of its board of directors, a conversion proposal consistent with this section. The credit union shall notify the department of the board's approval of the proposal within 5 days of the approval. In addition, the following documents must be sent to the department as soon as reasonably practical:

(A) Copies of any filings made with any state or federal regulatory agency and insuring organization with jurisdiction over any aspect of the conversion process;

(B) A copy of the disclosure materials and the ballot to be sent to eligible members relative to voting on the conversion proposal;

(C) An estimated budget of the anticipated conversion expenses including legal, postage and mailing, advertising, printing, consulting fees, examination and operating fees, and any overtime or other employee compensation to be paid exclusively as a result of the conversion; and

(D) Any other information reasonably requested by the commissioner.

(5) Membership approval. The members of the credit union must approve the conversion proposal by an affirmative vote of a majority of those eligible members who vote on such proposal, unless the bylaws require a higher vote threshold. The credit union shall submit a vote certification as required by section 91.1008(c) of this chapter showing that the conversion proposal was approved by the members of the credit union;

(6) Insuring organization requirements. The credit union must furnish written evidence of its compliance with any voting procedures and disclosure requirements imposed by its insuring organization; and

(7) Other regulatory oversight. The credit union must furnish written evidence that it has met all conversion requirements of the acquiring state or federal regulatory agency.

(c) Notice, disclosure materials, and ballot mailed to members. The credit union shall mail to each eligible member, as defined in Section 91.1008 of this Chapter, a notice advising the member of the adoption and filing of the conversion proposal. The notice must include a prominent statement that the conversion will be decided by a majority of eligible members who vote on the issue (unless the bylaws require a higher vote threshold), and that each eligible member is only entitled to vote once. Also, incorporated with the mailing of the notice, eligible members shall be provided with plain language disclosures of material facts and information to be used as a basis for reaching an informed decision to vote on the conversion. The disclosures and ballot shall be submitted to the commissioner for approval. The commissioner may require changes in the disclosures and ballot provided to eligible members to assure full and adequate disclosure prior to the documents being mailed to eligible members.

(d) Conflict of interest. A director, officer, committee member, agent, or senior management employee of the credit union, and immediate family members of such individuals shall not, directly or indirectly, receive a fee, commission, or other consideration, other than that person's usual salary or compensation, for aiding, promoting, or assisting in a conversion under this section.

(e) Continuity of existence. The corporate existence of a credit union converting under this rule shall continue in its successor. Each member shall be entitled to receive a share or deposit account or accounts in the converted institution equal in amount to the value of accounts held in the former credit union subject to any lien or right of offset held by the credit union.

(f) Approval. The commissioner shall approve the conversion if all of the conditions required by this section have been met, unless the commissioner determines the conversion is being made to circumvent a pending supervisory action that is about to be or has been initiated by the commissioner because of a concern over the safety and soundness of the credit union.

(g) Effective date. Once the commissioner has approved the conversion, it shall become effective upon the issuance of a charter or certificate of incorporation from the acquiring state or federal regulatory agency.

Source: The provisions of this §91.1007 adopted to be effective July 2, 2006, 31 TexReg 5077; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§91.1008. Conversion Voting Procedures and Restrictions; Filing Requirements.

(a) Voting procedures. Eligible members may vote on a plan of conversion by written ballot either filed in person at a special meeting held on the date set for the vote or mailed by the member. The vote on a conversion proposal must be by secret ballot. Mail balloting must be conducted in accordance with §91.302 of this Chapter.

(b) Definitions.

(1) "Eligible Member" means a member of a credit union who is approved and fully qualified for membership in accordance with the credit union's bylaws and written policies as of the eligibility record date.

(2) "Eligibility Record Date" means the cut off date for determining eligible members, which shall be deemed to be the last day of the month immediately preceding the date the credit union's board of directors notifies members or the public that it is contemplating a conversion.

(c) Voting ballots. All ballots must include the following:

(1) The name of the credit union and the name of the proposed institution if the conversion is approved. This information may be incorporated into the body of the voting options;

(2) The date and time by which the ballot must be received if mailed; and

(3) The following statements, printed in a manner acceptable to the commissioner:

(A) The conversion will be decided by a majority of credit union members who vote on the issue (unless the bylaws require a higher vote threshold);

(B) Once a vote has been cast, it may not be changed; and

(C) A "yes" vote means the credit union will become a (insert conversion entity type) and a "no" vote means the credit union will remain a (insert state or federal) credit union.

(D) Vote certification. Within ten business days following a vote on a plan of conversion, the credit union shall file with the department a certified copy of a resolution of the board of directors stating that voting on the conversion has been completed in accordance with this section and setting out the following information:

(1) The total number of members eligible to vote;

(2) The number of eligible members who voted (either at the special meeting or by mail); and

(3) The total number of votes cast in favor and against the plan of conversion.

Source: The provisions of this §91.1008 adopted to be effective July 2, 2006, 31 TexReg 5078; reviewed and readopted to be effective June 22, 2009, 34 TexReg 4549; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

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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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§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; reviewed and readopted to be effective June 24, 2013, 38 TexReg 4392.

§97.207. Contracts for Professional or Personal Service.

(a) In connection with the authority granted to the commissioner to negotiate, contract or enter into an agreement for professional or personal services under §15.414, Texas Finance Code, the Department hereby incorporates by reference the procurement rules of the Comptroller of Public Accounts, 34 TAC Chapter 20 (relating to Texas Procurement and Support Services), or any successor rules, regarding soliciting and awarding contracts. The Department shall comply, to the extent applicable, with the requirements of these rules when contracting for professional or personal services that are paid for with State appropriated money or paid by credit unions pursuant to 7 TAC §97.113(l) of this title (relating to Fees and Charges).

(b) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds: "Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards."

(c) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding dispute resolution: "The parties shall attempt to resolve any dispute arising under this contract by using the Department's dispute resolution process." The Department hereby incorporates by reference as its dispute resolution process the rules found in 1 TAC Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes), or any successor rules.

Source: The provisions of this §97.207 adopted to be effective March 14, 2004, 29 TexReg 2639; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4516; reviewed and amended to be effective July 14, 2013, 38 TexReg 4318.

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Part VIII. Joint Interpretations

Chapter 151. Procedures for Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§151.1. Application for Interpretation.

(a) The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a) (5)-(7), (e)-(p), and (t), Article XVI of the Texas Constitution.

(b) An interested person may submit a request for an interpretation of Section 50(a) (5)-(7), (e)-(p), and (t), Article XVI of the Texas Constitution. All requests must:

(1) be directed to the general counsel for the Office of Consumer Credit Commissioner who will promptly distribute it to the general counsels for the Department of Banking, the Department of Savings and Mortgage Lending, and the Credit Union Department;

(2) contain an explicit statement that an interpretation approved by the Finance Commission and Credit Union Commission is desired;

(3) contain the reference to the specific applicable section, subsection and paragraph of the Texas Constitution of which the interpretation is requested;

(4) state with sufficient particularity the factual and legal context to which the application of the provision is vague or ambiguous; and

(5) indicate the requestor's opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions, and all prior interpretations to which the request relates.

Source: The provisions of this §151.1 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§151.2. Review of Request.

(a) The request for interpretation shall be evaluated to determine:

(1) whether the requestor has complied with the requirements of §151.1(b);

(2) the significance and general application of the interpretation; and

(3) the ambiguity of the constitutional provision.

(b) Reasons for a denial of a request for interpretation will be stated in writing.

Source: The provisions of this §151.2 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§151.3. Initiation of Interpretation Procedure.

(a) If an interpretation is initiated, the requestor shall be notified in writing.

(b) To ensure that clear and concise formal interpretations are made, it may be necessary to rephrase the original interpretation request. A requestor will be notified in writing if a request is rephrased and a copy of the rephrased request shall be provided to the requestor.

(c) Copies of the request for interpretation will be sent to parties requesting advance notice for their input.

(d) The parties requesting advance notice may provide their input indicating an opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions and all prior interpretations to which the request relates.

(e) The input of the parties requesting advance notice will be considered.

Source: The provisions of this §151.3 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9073; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§151.4. Notice of Proposed Interpretation.

If the Finance Commission and the Credit Union Commission propose an interpretation, notice of the proposed interpretation will be published in the Texas Register. The notice of the proposed interpretation shall contain:

(1) A brief explanation of the proposed interpretation;

(2) The text of the proposed interpretation, except any portion omitted under Section 2002.014, Government Code, prepared in a manner to indicate any words to be added or deleted from the current text;

(3) A reference to the section of the constitution interpreted; and

(4) A statement of whether the interpretation is inconsistent with any other interpretations and an explanation of the justification for any inconsistency.

Source: The provisions of this §151.4 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§151.5. Public Comment.

Any person may submit comments, briefs or proposals pertaining to the proposed interpretation not later than 30 days following the publication of the proposed interpretation in the Texas Register. The Finance Commission and Credit Union Commission will allow the opportunity for public comment and public hearing as required by Section 2001.029, Government Code.

Source: The provisions of this §151.5 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 4393.

§151.6. Action on Proposed Interpretation.

The Finance Commission and the Credit Union Commission may adopt or decline to adopt the proposed interpretation or remand the proposed interpretation for modification, revision, or additional comment. This action will be conducted at a public meeting.

Source: The provisions of this §151.6 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§151.7. Adoption of Interpretation.

The interpretation as finally adopted by the Finance Commission and Credit Union Commission, will include:

(1) a reasoned justification for the interpretation as adopted consisting solely of:

(A) a summary of comments received from parties interested in the interpretation that shows the names of interested parties or associations offering comment on the interpretation and whether they were for or against its adoption;

(B) a summary of the factual basis for the interpretation as adopted which demonstrates a rational connection between the factual basis for the interpretation and the interpretation as adopted; and

(C) the reasons why the Finance Commission and Credit Union Commission disagree with party submissions and proposals;

(2) a concise restatement of the particular constitutional provisions under which the interpretation is adopted and of how the Finance Commission and Credit Union Commission interpret the provisions as authorizing or requiring the interpretation; and

(3) a certification that the interpretation, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Finance Commission's and Credit Union Commission's legal authority.

Source: The provisions of this §151.7 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§151.8. Savings Clause and Severability.

The Finance Commission and Credit Union Commission intend that each provision of any interpretation adopted under Chapters 151, 152, and 153 of this title is consistent with Chapter 2001, Government Code. The provisions of any interpretation adopted under Chapters 151, 152, and 153 of this title are severable. If any provision of any interpretation adopted under Chapters 151, 152, and 153 of this title is determined to be inconsistent with Chapter 2001, Government Code or otherwise invalid, all valid provisions are severable from the invalid part.

Source: The provisions of this §151.8 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

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Part VIII. Joint Interpretations

Chapter 153. Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this section, unless the context indicates otherwise:

(1) Balloon – an installment that is more than an amount equal to twice the average of all installments scheduled before that installment.

(2) Business Day – All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(3) Closed or closing – the date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

(4) Consumer Disclosure – The written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

(5) Cross-default provision– a provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

(6) Date the extension of credit is made – the date on which the closing of the equity loan occurs.

(7) Equity loan – An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(8) Equity loan agreement – the documents evidencing the agreement between the parties of an equity loan.

(9) Fair Market Value – the fair market value of the homestead as determined on the date that the loan is closed.

(10) Force-placed insurance – insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(11) Interest – interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.

(12) Lockout provision – a provision in a loan agreement that prohibits a borrower from paying the loan early.

(13) Owner – A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(14) Preclosing Disclosure – The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(15) Three percent limitation – the limitation on fees in Section 50(a)(6)(E).

Source: The provisions of this §153.1 adopted to be effective January 7, 2004, 29 TexReg 84; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.2. Voluntary Lien: Section 50(a)(6)(A).

An equity loan must be secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse.

(1) The consent of each owner and each owner's spouse must be obtained, regardless of whether any owner's spouse has a community property interest or other interest in the homestead.

(2) An owner or an owner's spouse who is not a maker of the note may consent to the lien by signing a written consent to the mortgage instrument. The consent may be included in the mortgage instrument or a separate document.

(3) The lender, at its option, may require each owner and each owner's spouse to consent to the equity loan. This option is in addition to the consent required for the lien.

Source: The provisions of this §153.2 adopted to be effective January 7, 2004, 29 TexReg 84; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.3. Limitation on Equity Loan Amount: Section 50(a)(6)(B).

An equity loan must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made. For example, on a property with a fair market value of $100,000, the maximum amount of debt against the property permitted by Section 50(a)(6)(B) is $80,000. Assuming existing debt of $30,000, the maximum amount of the equity loan debt is $50,000.

(1) The principal amount of an equity loan is the sum of:

(A) the amount of the cash advanced; and

(B) the charges at the inception of an equity loan to the extent these charges are financed in the principal amount of the loan.

(2) The principal balance of all outstanding debt secured by the homestead on the date the extension of credit is made determines the maximum principal amount of an equity loan.

(3) The principal amount of an equity loan does not include interest accrued after the date the extension of credit is made (other than any interest capitalized and added to the principal balance on the date the extension of credit is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

(4) On a closed-end multiple advance equity loan, the principal balance also includes contractually obligated future advances not yet disbursed.

Source: The provisions of this §153.3 adopted to be effective January 7, 2004, 29 TexReg 84; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21,2013, 38 TexReg 4393.

§153.4. Nonrecourse: Section 50(a)(6)(C).

An equity loan must be without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud.

(1) If an owner or the spouse of an owner cosigns an equity loan agreement or consents to a security interest, the equity loan must not give the lender personal liability against an owner or an owner's spouse.

(2) A lender is prohibited from pursuing a deficiency except when the owner or owner's spouse has committed actual fraud in obtaining an equity loan.

(3) To determine whether a lender may pursue personal liability, the borrower or owner must have committed "actual fraud." To obtain personal liability under this section, the deceptive conduct must constitute the legal standard of "actual fraud." Texas case law distinguishes "actual fraud" from "constructive fraud." "Actual fraud" encompasses dishonesty of purpose or intentional breaches of duty that are designed to injure another or to gain an undue and unconscientious advantage.

Source: The provisions of this §153.4 adopted to be effective January 7, 2004, 29 TexReg 85; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.5. Three percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the three percent fee limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the three percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the three percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the three percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under the law, for example per diem interest and points, are not fees subject to the three percent limitation.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest are fees subject to the three percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest are fees subject to the three percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating a loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation.

Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse at the inception of an equity loan to maintain the loan that are not interest are fees subject to the three percent limitation. Charges that are not interest that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the three percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the three percent limitation. Examples of these charges include title insurance and mortgage insurance protection.

(12) Charges to Service. Charges paid by an owner or an owner's spouse at the inception of an equity loan for a party to service the loan that are not interest are fees subject to the three percent limitation. Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.

(13) Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Chapter 342 of the Texas Finance Code may charge only those fees permitted in TEX. FIN. CODE, §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Chapter 342 of the Texas Finance Code and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Chapter 342 of the Texas Finance Code.

(14) Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the three percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(15) Subsequent Events. The three percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the three percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(16) Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the three percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

Source: The provisions of this §153.5 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.7. Prohibition on Prepayment Penalties: Section 50(a)(6)(G).

An equity loan may be paid in advance without penalty or other charge.

(1) A lender may not charge a penalty to a borrower for paying all or a portion of an equity loan early.

(2) A lockout provision is not permitted in an equity loan agreement because it is considered a prepayment penalty.

Source: The provisions of this §153.7 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(C) insurance proceeds related to the homestead;

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

(2) A guaranty or surety of an equity loan is not permitted. A guaranty or surety is considered additional property for purposes of Section 50(a)(6)(H). Prohibiting a guaranty or surety is consistent with the prohibition against personal liability in Section 50(a)(6)(C). An equity loan with a guaranty or surety would create indirect liability against the owner. The constitutional home equity lending provisions clearly provide that the homestead is the only

allowable collateral for an equity loan. The constitutional home equity provisions prohibit the lender from contracting for recourse of any kind against the owner or owner's spouse, except for provisions providing for recourse against the owner or spouse when the extension of credit is obtained by actual fraud.

(3) A contractual right of offset in an equity loan agreement is prohibited.

(4) A contractual cross-collateralization clause in an equity loan agreement is prohibited.

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section (50)(a)(H).

Source: The provisions of this §153.8 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.9. Acceleration: Section 50(a)(6)(J).

An equity loan may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead.

(1) An equity loan agreement may contain a provision that allows the lender to accelerate the loan because of a default under the covenants of the loan agreement. Examples of these provisions include a promise to maintain the property or not remove improvements to the property that indirectly affects the market value of the homestead.

(2) A contractual cross-default clause is permitted only if the lien associated with the equity loan agreement is subordinate to the lien that is referenced by the cross default clause.

Source: The provisions of this §153.9 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.10. Number of Loans: Section 50(a)(6)(K).

An equity loan must be the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Section 50(a)(1)-(a)(5) or (a)(8).

(1) Number of Equity Loans. An owner may have only one equity loan at a time, regardless of the aggregate total outstanding debt against the homestead.

(2) Loss of Homestead Designation. If under Texas law the property ceases to be the homestead of the owner, then the lender, for purposes of Section 50(a)(6)(K), may treat what was previously a home equity mortgage as a non-homestead mortgage.

Source: The provisions of this §153.10 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted effective June 21, 2013, 38 TexReg 4393.

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i).

Unless an equity loan is a home equity line of credit under Section 50(a)(6)(t), the loan must be scheduled to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the

date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing.

(2) For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(3) For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(4) Section 50(a)(6)(L)(i) does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

Source: The provisions of this §153.11 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 203, 38 TexReg 4393.

§153.12. Closing Date: Section 50(a)(6)(M)(i).

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12^{th} calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender.

(2) A loan application may be given orally or electronically.

Source: The provisions of this §153.12 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and amended to be effective November 13, 2008, 33 TexReg 9075; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.13. Preclosing Disclosure: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written

consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) For purposes of this section, the "preclosing disclosure" consists of a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(2) The copy of the loan application submitted to the owner in satisfaction of the preclosing disclosure requirement must be the most current version at the time the document is delivered. The lender is not obligated to provide another copy of the loan application if the only difference from the version previously provided to the owner is formatting. The lender is not obligated to give another copy of the loan application if the information contained on the more recent application is the same as that contained on the application of which the owner has a copy.

(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interests, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(4) Bona fide emergency.

(A) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(B) To document a bona fide emergency modification, the lender should obtain a written statement from the owner that:

(i) describes the emergency;

(ii) specifically states that the owner consents to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all actual fees, points, costs, and charges one day prior to closing.

(5) Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) Good cause to modify the preclosing disclosure or to receive a subsequent disclosure modifying the preclosing disclosure on the date of closing may only be established by the owner.

(i) The term "good cause" as used in this section means a legitimate or justifiable reason, such as financial impact or an adverse consequence.

(ii) At the owner's election, a good cause to modify the preclosing disclosure may be established if:

(I) the modification does not create a material adverse financial consequence to the owner; or

(II) a delay in the closing would create an adverse consequence to the owner.

(iii) The term "de minimis" as used in this section means a very small or insignificant amount.

(B) At the owner's election, a de minimis good cause standard may be presumed if:

(i) the total actual disclosed fees, costs, points, and charges on the date of closing do not exceed in the aggregate more than the greater of $100 or 0.125 percent of the principal amount of the loan (e.g. 0.125 percent on a $80,000 principal loan amount equals $100) from the initial preclosing disclosure; and

(ii) no itemized fee, cost, point, or charge exceeds more than the greater of $100 or 0.125 percent of the principal amount of the loan than the amount disclosed in the initial preclosing disclosure.

(C) To document a good cause modification of the disclosure, the lender should obtain a written statement from the owner that:

(i) describes the good cause;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(7) The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

Source: The provisions of this §153.13 adopted to be effective June 29, 2006, 31 TexReg 5080; amended to be effective November 9, 2006, 31 TexReg 9022; reviewed and amended to be effective November 13, 2008, 33 TexReg 9075; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Soldiers' and Sailors' Civil Relief Act.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The 3% fee cap required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

Source: The provisions of this §153.14 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and amended to be effective November 13, 2008, 33 TexReg 9076; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead.

(2) A lender may accept a properly executed power of attorney allowing the attorney-in-fact to execute closing documents on behalf of the owner.

(3) A lender may receive consent required under Section 50(a)(6)(A) by mail or other delivery of the party's signature to an authorized physical location and not the homestead.

Source: The provisions of this §153.15 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.16. Rate of Interest: Section 50(a)(6)(O).

A lender may contract for and receive any fixed or variable rate of interest authorized under statute.

(1) An equity loan that provides for interest must comply with constitutional and applicable law. Interest rates on certain first mortgages are not limited on loans subject to the federal Depository Institutions Deregulation and Monetary Control Act of 1980 and the Alternative Mortgage Transaction Parity Act. Chapter 342 of the Texas Finance Code provides for a maximum rate on certain secondary mortgage loans. Chapter 124 of the Texas Finance Code and federal law provide for maximum rates on certain mortgage loans made by credit unions. These statutes operate in conjunction with Section 50(a) and other constitutional sections.

(2) An equity loan must amortize and contribute to amortization of principal.

(3) The lender may contract to vary the scheduled installment amount when the interest rate adjusts on a variable rate equity loan. A variable-rate loan is a mortgage in which the lender, by contract, can adjust the mortgage's interest rate after closing in accordance with an external index.

(4) The scheduled installment amounts of a variable rate equity loan must be:

(A) substantially equal between each interest rate adjustment; and

(B) sufficient to cover at least the amount of interest scheduled to accrue between each payment date and a portion of the principal.

(5) An equity loan agreement may contain an adjustable rate of interest that provides a maximum fixed rate of interest pursuant to a schedule of steps or tiered rates or provides a lower initial interest rate through the use of a discounted rate at the beginning of the loan.

Source: The provisions of this §153.16 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.17. Authorized Lenders: Section 50(a)(6)(P).

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage broker.

(1) An authorized lender under Chapter 341, Texas Finance Code, must meet both constitutional and statutory qualifications to make an equity loan.

(2) A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans. Approved correspondents to a HUD-approved mortgage are not authorized lenders of equity loans unless qualifying under another section of (a)(6)(P).

(3) A non-depository lender or broker that makes, negotiates, arranges, or transacts a secondary mortgage loan that is governed by Chapter 342, Texas Finance Code, must comply with the licensing provisions of Chapter 342, Texas Finance Code.

(4) A lender who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).

Source: The provisions of this §153.17 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.18. Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).

An equity loan must be made on the condition that the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender.

(1) The lender may not require an owner to repay a debt owed to the lender, unless it is a debt secured by the homestead. The lender may require debt secured by the homestead or debt to another lender or creditor be paid out of the proceeds of an equity loan.

(2) An owner may apply for an equity loan for any purpose. An owner is not precluded from voluntarily using the proceeds of an equity loan to pay on a debt owed to the lender making the equity loan.

Source: The provisions of this §153.18 adopted to be effective June 29, 2006, 31 TexReg 5080; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.20. No Blanks in Any Instrument: Section 50(a)(6)(Q)(iii).

A home equity loan must be made on the condition that the owner of the homestead not sign any instrument in which blanks are left to be filled in.

(1) This Section of the Constitution prohibits the owner of the homestead from signing any instrument in which blanks are "left to be filled in". This Section is intended to prohibit a person other than the owner from completing one or more blanks in an instrument after the owner has signed the instrument and delivered it to the lender, thereby altering a party's obligation created in the instrument. Not all documents or records executed in connection with an equity loan are instruments, and not all blanks contained in an instrument are "blanks that are left to be filled in" as contemplated by this Section.

(2) As used in this Section, the term instrument means a document or record that creates or alters a legal obligation of a party. A disclosure required under state or federal law is not an instrument if the disclosure does not create or alter the obligation of a party.

(3) If at the time the owner signs an instrument, a blank is completed or box checked which indicates the owner's election to select one of multiple options offered (such as an election to select a fixed rate instead of an adjustable rate) and the owner therefore by implication has excluded the non-selected options, the instrument does not contain "blanks left to be filled in" when the non-selected option is left blank.

Source: The provisions of this §153.20 adopted to be effective June 29, 2006, 31 TexReg 5080; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan. One copy of these documents may be provided to married owners. This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.

Source: The provisions of this §153.22 adopted to be effective January 7, 2004, 29 TexReg 87, reviewed and amended to be effective July 10, 2008, 33 TexReg 5295; reviewed and amended to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.24. Release of Lien: Section 50(a)(6)(Q)(vii).

The lender must cancel and return the note to the owner and give the owner a release of lien or a copy of an endorsement and assignment of the lien to another lender refinancing the loan within a reasonable time after termination and full payment of the loan. The lender or holder, at its option, may provide the owner a release of lien or an endorsement and assignment of the lien to another lender refinancing the loan.

(1) The lender will perform these services and provide the documents required in 50(a)(6)(Q)(vii) without charge.

(2) This section does not require the lender to record or pay for the recordation of the release of lien.

(3) Thirty days is a reasonable time for the lender to perform the duties required under this section.

(4) An affidavit of lost or imaged note, or equivalent, may be returned to the owner in lieu of the original note, if the original note has been lost or imaged.

Source: The provisions of this §153.24 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.25. Right of Rescission: Section 50(a)(6)(Q)(viii).

The owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge.

(1) This provision gives the owner's spouse, who may not be in record title or have community property ownership, the right to rescind the transaction.

(2) The owner and owner's spouse may rescind the extension of credit within three calendar days. If the third calendar day falls on a Sunday or federal legal public holiday then the right of rescission is extended to the next calendar day that is not a Sunday or federal legal public holiday.

(3) A lender must comply with the provisions of the Truth-in-Lending Act permitting the borrower three business days to rescind a mortgage loan in applicable transactions. Lender compliance with the right of rescission procedures in the Truth-in-Lending Act and Regulation

Z, satisfies the requirements of this section if the notices required by Truth-in-Lending and Regulation Z are given to each owner and to each owner's spouse.

Source: The provisions of this §153.25 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e).

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless: (1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50 of the Texas Constitution; or (2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law that authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

Source: The provisions of this §153.41 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(4) A lender whose discussions with the borrower are conducted primarily in Spanish for a close-end loan may rely on the translation of the consumer notice developed under the

requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

Source: The provisions of this §153.51 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and amended to be effective November 13, 2008, 33 TexReg 9076; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.82. Owner Requests for HELOC Advance: Section 50(t)(1).

A home equity line of credit (HELOC) is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the owner requests advances, repays money, and reborrows money. Any owner who is also a named borrower on the HELOC may request an advance. A HELOC agreement may contain provisions that restrict which borrowers may request an advance or require all borrowers to consent to the request.

Source: The provisions of this §153.82 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited include prearranged drafts, preprinted checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) the advance requirements in Section 50(t)(2);

(B) the loan to value limits in Section 50(t)(5); and

(C) the debit or advance limits in Section 50(t)(6).

(2) A borrower may from time to time specifically request preprinted checks for use in obtaining a HELOC advance but may not request the lender to periodically send preprinted checks to the borrower. A borrower may use a check reorder form, which may be included with preprinted checks, as a means of requesting a specific number of preprinted checks.

(3) An owner may, but is not required to, make in-person contact with the lender to request preprinted checks or to obtain a HELOC advance.

Source: The provisions of this §153.84 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and amended to be effective July 10, 2008, 33 TexReg 5295; reviewed and amended to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.85. Time the Extension of Credit is Established: Section 50(t)(4).

(a) A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which fees described in Section 50(a)(6)(E) are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance.

(b) For the purpose of this section, the time the extension of credit is established for a HELOC refers to the date of closing.

Source: The provisions of this §153.85 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.86. Maximum Principal Amount Extended under a HELOC: Section 50(t)(5).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the maximum principal amount that may be extended under the account, when added to the aggregated total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, cannot exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made.

(1) At the time the initial or subsequent advance is made, the principal amount of the advance must comply with Section 50(t)(5). The following amounts when added together must be equal to or less than 80 percent of the fair market value:

(A) the amount of the advance;

(B) the amount of the principal balance of the HELOC at the time of the advance; and

(C) the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

(2) An advance under Section 50(t)(5) must meet the requirements of Section 50(t)(2).

(3) The maximum principal balance of the HELOC that may be outstanding at any time must be determined on the date of closing and will not change through the term of the HELOC.

(4) For purposes of calculating the limits and thresholds under Section 50(t)(5) and (6), the outstanding principal balance of all other debts secured by the homestead is the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

Source: The provisions of this §153.86 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.87. Maximum Principal Amount of Additional Advances under a HELOC: Section 50(t)(6).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which no additional debits or advances can

be made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established.

(1) A subsequent advance may be made only when the outstanding principal amount of the HELOC is 50 percent or less of the fair market value.

(2) A subsequent advance is prohibited if the outstanding principal amount of the HELOC exceeds 50 percent of the fair market value.

(3) If the outstanding principal amount exceeds 50 percent of the fair market value and then is repaid to an amount equal to or below the 50 percent of the fair market value, subsequent advances are permitted subject to the requirements of Sections 50(t)(2) and (5).

Source: The provisions of this §153.87 adopted to be effective March 11, 2004, 29 TexReg 2311; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.88. Repayment Terms of a HELOC: Section 50(t)(8).

(a) A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and after the period during which the owner may request advances, installments are substantially equal.

(b) Repayment of a HELOC is not required to begin until two months after the initial advance. For example, if an advance is not made at the time of closing, the repayment period is not required to begin until after the first advance. If there is no outstanding balance, then a payment is not required.

(c) Nothing in this section prohibits a borrower from voluntarily making payments on a schedule that is more frequent or earlier than is required by a lender.

Source: The provisions of this §153.88 adopted to be effective March 11, 2004, 29 TexReg 2311; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.91. Adequate Notice of Failure to Comply.

(a) A borrower notifies a lender or holder of its alleged failure to comply with an obligation by taking reasonable steps to notify the lender or holder of the alleged failure to comply. The notification must include a reasonable:

(1) identification of the borrower;

(2) identification of the loan; and

(3) description of the alleged failure to comply.

(b) A borrower is not required to cite in the notification the section of the Constitution that the lender or holder allegedly violated.

Source: The provisions of this §153.91 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.92. Counting the 60-Day Cure Period.

(a) For purposes of Section 50(a)(6)(Q)(x), the day after the lender or holder receives the borrower's notification is day one of the 60-day period. All calendar days thereafter are counted up to day 60. If day 60 is a Sunday or federal legal public holiday, the period is extended to include the next day that is not a Sunday or federal legal public holiday.
(b) If the borrower provides the lender or holder inadequate notice, the 60-day period does not begin to run.

Source: The provisions of this §153.92 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.93. Methods of Notification.

(a) At closing, the lender or holder may make a reasonably conspicuous designation in writing of the location where the borrower may deliver a written or oral notice of a violation under 50(a)(6)(Q)(x). The designation may include a mailing address, physical address, and telephone number. In addition, the lender or holder may designate an email address or other point of contact for delivery of a notice.
(b) If the lender or holder chooses to change the designated delivery location as provided in subsection (a) of this section, the address change does not become effective until the lender or holder sends conspicuous written notice of the address change to the borrower.
(c) The borrower may always deliver written notice to the registered agent of the lender or holder even if the lender or holder has named a delivery location.
(d) If the lender or holder does not designate a location where the borrower may deliver a notice of violation, the borrower may deliver the notice to any physical address or mailing address of the lender or holder.
(e) Delivery of the notice by borrower to lender or holder's designated delivery location or registered agent by certified mail return receipt or other carrier delivery receipt, signed by the lender or holder, constitutes a rebuttable presumption of receipt by the lender or holder.
(f) If the borrower opts for a location or method of delivery other than set out in subsection (e), the borrower has the burden of proving that the location and method of delivery were reasonably calculated to put the lender or holder on notice of the default.

Source: The provisions of this §153.93 adopted to be effective March 3, 2005, 30 TexReg 1068; reviewed and adopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.94. Methods of Curing a Violation Under Section 50(a)(6)(●)(x)(a)-(e).

(a) The lender or holder may correct a failure to comply under Section 50(a)(6)(Q)(x)(a) – (e), on or before the 60th day after the lender or holder receives the notice from an owner, if the lender or holder delivers required documents, notices, acknowledgements, or pays funds by:
(1) placing in the mail, placing with other delivery carrier, or delivering in person the required documents, notices, acknowledgements, or funds;
(2) crediting the amount to borrower's account; or

(3) using any other delivery method that the borrower agrees to in writing after the lender or holder receives the notice.

(b) The lender or holder has the burden of proving compliance with this section.

Source: The provisions of this §153.94 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.95. Cure a Violation Under Section 50(a)(6)(Q)(x).

(a) If the lender or holder timely corrects a violation of Section 50(a)(6) as provided in Section 50(a)(6)(Q)(x), then the violation does not invalidate the lien.

(b) A lender or holder who complies with Section 50(a)(6)(Q)(x) to cure a violation before receiving notice of the violation from the borrower receives the same protection as if the lender had timely cured after receiving notice.

(c) A borrower's refusal to cooperate fully with an offer that complies with Section 50(a)(6)(Q)(x) to modify or refinance an equity loan does not invalidate the lender's protection for correcting a failure to comply.

Source: The provisions of this §153.95 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and amended to be effective November 13, 2008, 33 TexReg 9077; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

§153.96. Correcting Failures Under Section 50(a)(6)(Q)(x)(f).

(a) To correct a failure to comply under Section 50(a)(6)(Q)(x)(f), on or before the 60th day after the lender or holder receives the notice from the borrower the lender or holder may:

(1) refund or credit the $1,000 to the account of the borrower; and

(2) make an offer to modify or an offer to refinance the extension of credit on the terms provided in Section 50(a)(6)(Q)(x)(f) by placing the offer in the mail, other delivery carrier, or delivering the offer in person to the owner.

(b) To correct a failure to comply under Section 50(a)(6)(Q)(x)(f):

(1) the lender or holder has the option to either refund or credit $1,000; and

(2) the lender or holder and borrower may:

(A) modify the equity loan without completing the requirements of a refinance; or

(B) refinance with an extension of credit that complies with Section 50(a)(6).

(c) The lender or holder has the burden of proving compliance with this section.

(d) After the borrower accepts an offer to modify or refinance, the lender must make a good faith attempt to modify or refinance within a reasonable time not to exceed 90 days.

Source: The provisions of this §153.96 adopted to be effective November 11, 2004, 29 TexReg 10260; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393.

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