



## ***CREDIT UNION DEPARTMENT***

**DATE:**        **November 17, 2014**

**TO:**            **State Chartered Credit Unions**

**SUBJECT:**    **Change 38 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**

91-15 thru 91-18

91-31 thru 91-34

91-42 thru 91-46

95-1 thru 95-6

### **INSERT**

91-15 thru 91-18

91-31 thru 91-34

91-42 thru 91-46

95-1 thru 95-6

### **AMENDMENTS OR NEW RULES**

Amended Rule [91.209](#)

Amended Rule [91.502](#)

Amended Rule [91.704](#)

Readopted Rules 95.100, 95.101, 95.102, 95.103, 95.104, 95.105, 95.106, 95.107, 95.108, 95.109, and 95.110 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.

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.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a) of this section, order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to negate the credit union being assessed a civil money penalty under Section 202 of the Federal Credit Union Act (12 U.S.C. § 1782) for late or false/misleading filing of a quarterly call report (Form 5300). This penalty shall be abated in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, however, shall not be decreased below the amount authorized to be levied under subsection (a).

*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; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572.*

#### **§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.*

**§91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.**

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

(b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors, (hereafter referred to as directors) or committee members for attending duly called meetings at which appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to annual report to membership). A credit union, however, may not pay any meeting fees to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are excessive as defined in §91.502(f).

(d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

(1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;

(2) the board of directors develops and maintains written policies and procedures regarding this matter; and

(3) the arrangement ceases immediately upon the person's leaving office.

(e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

- (1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and
- (2) it is in accordance with written board policies and procedures.

*Source: The provisions of this §91.502 adopted to be effective August 14, 2000, 25 TexReg 7632; amended to be effective July 11, 2004, 29 TexReg 6628; amended to be effective July 8, 2007, 32 TexReg 3979; reviewed and amended to be effective July 10, 2011, 36 TexReg 4110; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572.*

### **§91.503. Change in Credit Union President**

The board of directors, in executing its fiduciary responsibilities, may find it necessary to replace the credit union's president. The board shall submit written notification to the commissioner within ten days of any such personnel change. For purposes of this section, the term president refers to the individual responsible for the day-to-day operation of the credit union, irrespective of the actual title given to such individual.

*Source: The provisions of this §91.503 adopted to be effective January 7, 2004, 29 TexReg 82; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.*

### **§91.510. Bond and Insurance Requirements.**

(a) Fidelity bond. Each credit union shall purchase and maintain a blanket fidelity bond covering the officers, directors, employees, committee members, and its agents, against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery or alteration of instruments, misplacement or mysterious disappearance. All carriers writing credit union blanket bonds must be authorized by the Insurance Commissioner for the state of Texas as an acceptable fidelity on bonds in this state.

(1) Subject to approval by the credit union's board of directors, the amount of coverage to be required for each credit union shall be determined by the credit union, based on its assessment of the level that would be safe and sound in view of the credit union's potential exposure to risk.

(2) Each credit union may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the credit union's board of directors, additional coverage is warranted.

(3) The commissioner may require additional coverage of any credit union when, in his opinion, the fidelity bond in force is insufficient to provide adequate fidelity coverage. It shall be the duty of the board of directors to obtain the additional coverage within 30 days after the date of written notice of the findings by the commissioner.

- (b) Cancellation. A fidelity bond must include a provision requiring written notification by the fidelity to the commissioner prior to cancellation of any or all coverages set out in the bond which includes a brief statement of cause for termination.
- (c) Other insurance. Each credit union shall, subject to approval by the board, purchase appropriate insurance coverages to insure the credit union and its assets against loss or damage by fire, liability, casualty or any other insurance risks.
- (d) Board review. The board of directors of each credit union shall formally approve the credit union's bond and insurance coverages. In deciding whether to approve the coverages, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board's approval shall be included as part of the minutes of the meeting at which the board approves coverages. Additionally, the board of directors shall review the credit union's bond and insurance coverages at least annually to assess the continuing adequacy of coverage.
- (e) Review by fidelity company. Credit unions which are analyzed by a fidelity company shall notify the commissioner of the analysis within 30 days of the review commencement. The report of the review is to be provided to the commissioner upon request. The confidentiality of the report shall be preserved in the same manner afforded a report of examination conducted by the department.
- (f) Insuring organization's bond requirements. A credit union shall also comply with all bond requirements imposed by an insuring organization as a condition to maintain insurance on share and deposit accounts. Any credit union that fails to meet the minimum fidelity bond specifications contained within Part 741.201 of the NCUA Rules and Regulations may be deemed to be engaged in an unsafe practice pursuant to Finance Code §122.255.

*Source: The provisions of this §91.510 adopted to be effective August 14, 2000, 25 TexReg 7633; amended to be effective on July 11, 2004, 29 TexReg 2637; amended to be effective July 8, 2007, 32 TexReg 3980; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.*

#### **§91.515. Financial Reporting.**

- (a) Each credit union having assets of \$5 million or greater shall:
  - (1) prepare and maintain, on an accrual basis, accurate and complete records of its business transactions in accordance with generally accepted accounting principles, except as otherwise directed by regulatory requirements; and
  - (2) prepare its financial statements and reports, including reports to the members, board of directors, management and the department, in accordance with generally accepted accounting principles, except as otherwise directed by regulatory requirements.
- (b) Credit unions having assets of less than \$5 million may use another comprehensive basis of accounting.
- (c) In addition to the quarterly report to the department as prescribed by the Act, the commissioner may require from all credit unions or from selected categories of credit unions other financial and statistical reports relating to financial condition and accounting practices.

*Source: The provisions of this §91.515 adopted to be effective May 11, 2000, 25 TexReg 3952; amended to be effective March 14, 2004, 29 TexReg 2637; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.*

#### **§91.516. Audits and Verifications.**

(a) **Audit requirements.** At least once every calendar year, the board of directors shall obtain or cause to be performed an annual audit of the credit union which must cover the period elapsed since the last audit period. A summary of the audit must be reported to the members at the next membership meeting. The audit must be conducted in accordance with generally accepted auditing standards by a licensee of the Texas State Board of Public Accountancy or as permitted under the provisions of §741.202(a) of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741).

(b) **Definitions.**

(1) A record-keeping deficiency is serious if the commissioner reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets.

(2) A serious recordkeeping deficiency is persistent when it continues beyond a usual, expected or reasonable period of time.

(c) **Verification obligation.** The board of directors shall, at least once every two years, cause the share, deposit, and loan accounts to be verified against the records of the credit union as prescribed in §741.202(b) of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 741).

(d) **Remedies.** The commissioner may compel a credit union to obtain an audit and/or a verification of members' accounts, performed by an independent person, for any year in which any one of the following conditions is present:

(1) the credit union has not obtained an annual audit or caused an audit/verification to be performed;

(2) the credit union has obtained an audit/verification or performed an audit/verification which does not meet the specified requirements; or

(3) the credit union has experienced serious and persistent recordkeeping deficiencies.

(e) **Opinion audit required.** The commissioner may compel a credit union to obtain an opinion audit performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed by the state for any year in which the credit union has experienced persistent serious recordkeeping deficiencies. The objective of such an audit is to obtain an unqualified opinion on the credit union's financial statements.

*Source: The provisions of this §91.516 adopted to be effective May 11, 2000, 25 TexReg 3952; readopted to be effective December 18, 2003, 29 TexReg 235; amended to be effective July 8, 2007, 32 TexReg 3981; reviewed and amended to be effective on July 10, 2011, 36 TexReg 4110.*

## **Subchapter G. Lending Powers**

### **§91.701. Lending Powers.**

(a) Authorization. A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Written Policies. Before engaging in any lending activity, each credit union shall establish written lending policies that set prudent credit underwriting and documentation standards for each specific type of lending activity. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

- (1) Be consistent with safe and sound credit union practices;
- (2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;
- (3) Be compatible with the size and expertise of the credit union's lending staff;
- (4) Be compliant with all related laws and regulations;
- (5) Be reviewed and approved by the credit union's board of directors at inception and annually, thereafter;
- (6) Address loan portfolio diversification standards to avoid undue concentrations of risk;
- (7) Address loan documentation and underwriting standards that are clear and measurable;
- (8) Address loan administration procedures for monitoring the loss exposure from the loan portfolio;
- (9) Address loan pricing guidelines to ensure that the rate of return is consistent with the risk from the lending activity; and
- (10) State the lending authority delegated to any individuals or committees by the board of directors.

(c) Loan Documentation. The lending policies shall include loan documentation practices that:

- (1) Enable the credit union to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; and
- (3) Ensure that any claim against a member is legally enforceable.

(d) Credit Underwriting. A credit union shall establish and maintain prudent credit underwriting practices that:

- (1) Are commensurate with the types of loans the credit union will make and consider the terms and conditions under which they will be made;
- (2) Consider the nature of the markets in which loans will be made;
- (3) Provide for consideration of the member's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the member's character and willingness to repay as agreed;
- (4) Take adequate account of concentration of credit risk; and
- (5) Are appropriate to the size of the credit union and the nature and scope of its activities.

(e) **Loan Maturity Limit.** Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of any loan or extension of credit to a member may not exceed 15 years. Minimum payments, on a line of credit balance must be sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization.

(f) **Liquidity.** In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(g) **Waivers.** The commissioner in the exercise of discretion may grant a waiver in writing of any lending requirement described in this chapter. A decision to deny a waiver, however, is not subject to appeal. A waiver request must contain the following:

- (1) The requirement to be waived, the higher limit or the ratio sought;
- (2) An explanation of the need for the waiver or to raise the limit or ratio; and
- (3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

*Source: The provisions of this §91.701 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6266; amended to be effective March 14, 2004, 29 TexReg 2637; amended to be effective November 9, 2006, 31 TexReg 9017; reviewed and amended to be effective November 7, 2010, 35 TexReg 9716; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.*

### **§91.703. Interest Rates.**

(a) Loans made by each credit union shall bear interest at a rate or rates as may be determined by the credit union's board of directors. A board may delegate all or part of its power to determine the interest rates on any lending transactions. The board may also authorize a refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

*Source: The provisions of this §91.703 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and amended to be effective November 7, 2010, 35 TexReg 9717; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.*

### **§91.704. Real Estate Lending.**

(a) **Definitions.** For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) **First lien** means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) **Home loan** means a loan that is:

- (A) made to one or more individuals for personal, family, or household purposes; and
- (B) secured in whole or part by:

- (i) a manufactured home, as defined by Finance Code <\*>347.002, used or to be used as the borrower's principal residence; or
- (ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.

(4) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(6) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:

- (1) Title insurance;
- (2) Escrow administration;
- (3) Loan payoffs;
- (4) Collection and foreclosure; and
- (5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish its own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

- (A) Unimproved land held for investment/speculation--Loan to value limit 60%
- (B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%
- (C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%
- (D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%
- (E) Other residential real estate such as a second or vacation home--Loan to value limit 90%
- (F) Home equity--Loan to value limit 80%

(G) All Other--Loan to value limit 80%

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the 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.

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, credit unions engaged in real estate lending are expected to have loan policies that establish prudent standards for loan structure including tenor and amortization that are within the risk parameters approved by the board of directors and consistent with the following regulatory limits:

- (1) Improved residential real estate loans (principal residence, first lien)--40 years
- (2) Improved residential real estate loans (secondary residence, first lien)--30 years
- (3) Improved residential real estate loans (investment property, first lien)--20 years
- (4) Interim construction loans--18 months
- (5) Manufactured home (first lien)--20 years
- (6) Home equity loans--20 years (second lien)--30 years (first lien)
- (7) Home improvement loans--20 years

(8) A loan secured in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government or any agency of the Federal Government, may be made for the maturity specified in the law, regulations or program under which the insurance, guarantee or commitment is provided

(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan." "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

(f) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories:

(1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.

(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the

guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.

(g) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

(h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

*Source: The provisions of this §91.704 adopted to be effective August 9, 1999, 24 TexReg 6023; amended to be effective August 10, 2003, 28 TexReg 6267; amended to be effective November 9, 2006, 31 TexReg 9018; amended to be effective March 2, 2008, 33 TexReg 1515; amended to be effective March 4, 2009, 34 TexReg 1399; reviewed and amended to be effective November 7, 2010, 35 TexReg 9718; reviewed and amended to be effective November 9, 2014, 39 TexReg 8572.*

#### **§91.705. Home Improvement Loans.**

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

*Source: The provisions of this §91.705 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.*

#### **§91.706. Home Equity Loans.**

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

*Source: The provisions of this §91.706 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.*

### **§91.707. Reverse Mortgages.**

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

*Source: The provisions of this §91.707 adopted to be effective August 9, 1999, 24 TexReg 6023; readopted to be effective March 25, 2003, 28 TexReg 2960; readopted to be effective June 12, 2006, 31 TexReg 5152; reviewed and readopted to be effective June 21, 2010, 35 TexReg 5917; reviewed and readopted to be effective June 23, 2014, 39 TexReg 5203.*

### **§91.708. Real Estate Appraisals or Evaluations.**

(a) **Policies and Procedures.** A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.

(b) **Loans Over \$250,000.** For real estate loans in which the amount of the loan or extension of credit exceeds \$250,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.

(c) **Loans \$250,000 or Less.** For a real estate loans with an amount of the loan or extension of credit of \$250,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral that is supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations or from tax appraisal data of a governmental entity.

(d) **Right to Require an Appraisal.** The commissioner may require an appraisal under this section, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the collateral is overstated.

(e) **Existing Loans.** In the case of renewal of a loan where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of additional funds, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

## CHAPTER 95

### Subchapter A. Insurance Requirements

#### §95.100. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) “Act” means the Texas Credit Union Act (Texas Finance Code, Subtitle D).
- (2) “Deposit” means a balance held by a credit union and established by a credit union member, another credit union, a governmental unit, or an authorized nonmember in accordance with standards specified by the credit union, including balances designated as deposits, deposit certificates, checking accounts or accounts by other names. A “deposit” is a debt which earns interest and is owed by the credit union to the account holder.
- (3) “Federally-insured” means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF) under Title II of the Federal Credit Union Act (12 USC Section 1781 et. seq.), or its successor.
- (4) “Insuring organization” means a cooperative share insurance fund or a guaranty corporation or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions will be protected or guaranteed against loss up to a specified level for each account.
- (5) “Membership share” means a share of the credit union which shall be the balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. In the case of a joint account, the account may serve to represent the membership of each of the joint owners who have applied for and were accepted as members, as long as a full membership share for each joint owner seeking membership is maintained in the account.
- (6) “Participating credit union” means a credit union that has applied for and been admitted to participate in an insuring organization’s program and whose participation has not been terminated.
- (7) “Shares” means a balance held by a credit union and established in accordance with standards specified by the credit union including, but not limited to shares, share accounts, share certificates, share draft accounts or other such accounts. “Shares” may include membership shares. In addition, “shares” earn dividends.

*Source: The provisions of this §95.100 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### §95.101. Share and Depositor Insurance Protection.

- (a) Each credit union incorporated under the Act or otherwise authorized to do business in this state shall obtain share and deposit insurance for the protection of its members’ accounts. Such share and deposit guarantee insurance may be obtained from the NCUA through the

NCUSIF or from an insuring organization approved by the commissioner, with the advice and consent of the commission.

(b) Any credit union that fails to maintain in full force and effect share and deposit insurance protections as provided in this section shall cease accepting deposits and making loans immediately and shall terminate its corporate existence in this state under such terms and conditions as the commissioner deems appropriate.

*Source: The provisions of this §95.101 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.102. Qualifications for an Insuring Organization.**

(a) An insuring organization must, at a minimum, demonstrate the following prerequisites and must continue to meet these standards on an ongoing basis, in order to do business in this state:

(1) The insuring organization is authorized to provide share and deposit insurance protection in its state of domicile or in the State of Texas;

(2) The insuring organization is in good standing with the regulatory authorities in its state of domicile;

(3) The insuring organization receives regular examinations from its state of domicile;

(4) The insuring organization has capital which is adequate for its prospective business; and

(5) The insuring organization has loss reserves that are actuarially sound.

(b) In addition to the prerequisites delineated above, the department may scrutinize other data and information as the commissioner deems appropriate, including, but not limited to, demonstrated expertise in insuring credit union shares and deposits.

(c) The department shall have the right to examine the books and records of the insuring organization as part of the approval process. The insuring organization shall be assessed the supplemental examination fee as prescribed in <\*>97.113 of this title (relating to Fees and Charges). The insuring organization shall pay the fee to the department within thirty days of the assessment.

(d) The department may, in approving an insuring organization, impose such written conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

(e) If an approved insuring organization subsequently fails to meet any of the prerequisite standards or written conditions imposed by the department, the commissioner, in the exercise of discretion, may provide a reasonable period of time for the insuring organization to take corrective actions to bring its operations back into compliance. During this period of corrective action, however, an insuring organization may not contract with any additional credit unions to provide share and deposit insurance protection.

*Source: The provisions of this §95.102 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and amended to be effective March 10, 2011, 36 TexReg 1657; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

### **§95.103. General Powers and Duties of an Insuring Organization.**

In carrying out its general purposes, an insuring organization may:

- (1) guarantee to participating credit unions the payment of any deficiency in an individual member's share or deposit account(s) caused by credit union's insolvency or any other reason;
- (2) issue share and deposit insurance contracts or otherwise effect credit union share guaranty, and enter into other contracts necessary or advisable in the conduct of its business;
- (3) advance funds in accordance with agreed upon lending terms and conditions to aid participating credit unions to operate and to meet liquidity needs;
- (4) upon the written order of the commissioner, and at such compensation as shall be agreed upon, the insuring organization may assume control of the property and business of any participating credit union and operate it at the direction of the commissioner until its financial stability has been reestablished to the satisfaction of the commissioner, or the credit union has been liquidated or merged into another credit union;
- (5) assist in the merger, consolidation, or liquidation of participating credit unions;
- (6) receive money or other property from participating credit unions;
- (7) conduct investigation and audits of any applicant or participating credit union in order to determine the financial and operating condition of the applicant or participating credit union; and
- (8) establish conditions for participation by credit unions, including the establishment of risk eligibility standards.

*Source: The provisions of this §95.103 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

### **§95.104. Notices.**

- (a) An insuring organization shall provide written notice to the department of receipt of any application for participation by a credit union. Within 30 days of receipt of the notice, the department will advise the applicant and the insuring organization if it will interpose an objection to the proposal based on safety and soundness concerns. Any such objection must be addressed to the satisfaction of the department before the applicant will be eligible to participate in the insuring organization's program. The insuring organization shall also be responsible for notifying the department of its underwriting decision on any application and advising the department when an applicant has become a participating credit union.
- (b) At least 30-days prior to the effective date of any termination, an insuring organization shall notify the department in writing of any termination, voluntary or involuntary, of a participating credit union.

*Source: The provisions of this §95.104 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.105. Reporting.**

(a) Within one hundred days after the close of a fiscal year, an insuring organization shall file with the commissioner annually audited financial statements, prepared in accordance with generally accepted accounting principles covering that fiscal year. The audited financial statements shall be accompanied by an opinion of an independent certified public accountant. In addition, at least once every three years, the audit shall include an actuarial study of the capital adequacy of the insuring organization.

(b) The provisions of this section are in addition to those prescribed in §91.209 of this title (relating to Reports and Charges for Late Filing).

*Source: The provisions of this §95.105 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.106. Amount of Insurance Protection.**

(a) The primary insured or guaranteed amount for share and deposit accounts of individual members of participating credit unions shall never be less than the corresponding share insurance coverage provided by the NCUSIF or its successor.

(b) With the approval of the commissioner and if authorized by the insuring organization, a participating credit union may, from time to time as determined by its board of directors, issue membership shares that are not guaranteed and are subordinate to all other claims, including creditors, shareholders and the insuring organization.

*Source: The provisions of this §95.106 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.107. Sharing Confidential Information.**

In order to permit the insuring organization to assess the financial condition and performance of a participating credit union, the department shall, with the consent of such participating credit union, provide to the insuring organization any and all reports of examination conducted by, and orders and determinations issued by, the commissioner regarding that institution.

*Source: The provisions of this §95.107 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.108. Examinations.**

(a) The department may conduct examinations and investigations within or outside this state to determine whether an insuring organization has engaged, is engaging or is about to engage in

any act, practice or transaction which constitutes an unsafe or unsound practice or a violation of any law or rule applicable to the insuring organization.

(b) In lieu of an examination under this section, the commissioner may accept the examination report of another regulator authorized to examine the insuring organization.

*Source: The provisions of this §95.108 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.109. Fees and Charges.**

(a) An insuring organization shall pay the cost associated with an examination as prescribed in Section 97.113(k) of this title (relating to Foreign Credit Union Examination Fees).

(b) At the sole discretion of the commissioner, the department may engage professionals to perform and complete any aspect of an examination or investigation. The reasonable expenses and compensation of such professionals shall be paid by the insuring organization.

*Source: The provisions of this §95.109 adopted to be effective March 7, 2007, 32 TexReg 1064; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

#### **§95.110. Enforcement; Penalty; and Appeal.**

(a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b), (c), (d) and (e), Finance Code, to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §121.002(11)(C). If the insuring organization does not comply with the order, the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, Finance Code, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.

(b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Finality and Request for SOAH Hearing).

*Source: The provisions of this §95.110 adopted to be effective July 8, 2007, 32 TexReg 3982; reviewed and readopted to be effective October 18, 2010, 35 TexReg 9748; reviewed and readopted to be effective October 20, 2014, 39 TexReg 8604.*

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