



CREDIT UNION DEPARTMENT

DATE: **March 15, 2011**

TO: **State Chartered Credit Unions**

SUBJECT: **Change 28 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

Index – pages vii and viii	Index – pages vii and viii	Updated Index
91-23 thru 91-28-b	91-23 thru 91-28-b	Corrected Printing Error in Change 25
91-31 thru 91-38	91-31 thru 91-38	Readopted Rules 91.503, 91.510, 91.515, 91.601, 91.602, 91.608, and 91.610
95-1 thru 95-2	95-1 thru 95-2	Amended Rule 95.102
97-1 thru 97-4	97-1 thru 97-4	New Rule 97.104

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

The newsletter for February 28, 2011 has a summary of the new and amended rules. Additional copies of these rules can be obtained from the Texas Credit Union League, 4455 LBJ Freeway, Farmers Branch, Texas 75244.

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Subchapter D. Powers of Credit Unions

§91.401. Purchase, Lease, or Sale of Fixed Assets.

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

(1) Fixed Assets--real property, premises, furniture, fixtures and equipment.

(2) Furniture, fixtures, and equipment--all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment, including capitalized leases of such items.

(3) Immediate family member--a spouse or other family member living in the same household.

(4) Premises--any office, service center, parking lot, or other facility where the credit union transacts or intends to transact business. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.

(5) Real property--land and anything growing on, attached to, or erected on it that is acquired and intended primarily for the credit union's own use in conducting business. It does not include any real property which may be conveyed to the credit union in satisfaction of debts previously contracted in the course of business, nor any real estate that the credit union purchases at sale on judgments, decrees, mortgage or deed of trust foreclosures under a security agreement held by the credit union.

(6) Senior Management Employee--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.

(b) Fixed Asset Investment Limitations.

A credit union may purchase fixed assets or enter into a contract for the purchase or lease of fixed assets primarily for its own use in conducting business if the aggregate of all such investments does not exceed the lesser of 70% of the credit union's retained earnings or six percent of total assets.

(c) Restrictions.

(1) A credit union shall not purchase real estate (land or buildings) for the principal purpose of engaging in real estate rentals or speculation.

(2) A credit union bidding at a foreclosure or similar sale shall not bid a larger amount than is necessary to satisfy the debts and costs owed the credit union.

(d) Transactions with insiders.

Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(1) sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family members of such individual; or

(2) purchase or lease an asset in which a director, committee member, senior management employee, or immediate family members of such individual has an interest.

(e) Use requirement.

If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.

(f) Waiver.

The commissioner may, upon written application, waive or modify any of the limitations or restrictions placed on the investment of fixed assets.

(g) Written application.

A credit union requesting a waiver or modification of the fixed asset investment limits, shall submit statements and reports required by the commissioner, including but not limited to:

- (1) a description of the proposal's cost, usage, location, and method of financing;
- (2) a statement of the business reasons for making the investment and the economic advantages and disadvantages relating to the proposed investment;
- (3) evidence that the increase in operating expenses caused by the project can be supported after accounting for the current level of expenses and dividend commitments; and
- (4) the credit union's latest balance sheet, income statement and loan delinquency report.

Source: The provisions of this §91.401 adopted to be effective March 14, 2004, 29 TexReg 2306; readopted to be effective October 27, 2005, 30 TexReg 7505; reviewed and amended to be effective March 14, 2010, 35 TexReg 1978.

§91.402. Insurance for Members.

(a) Authority. A credit union may make insurance products available to its members, including insurance products at the individual member's expense, subject to the following conditions:

(1) Except as provided in paragraphs (2) and (3) of this subsection, the purchase of any type of insurance coverage by a member must be voluntary, and a copy of the signed and dated written election to purchase the insurance must be on file at the credit union.

(2) Insurance may be required on a loan if the coverage and the charges for the insurance bear a reasonable relationship to:

- (A) the value of the collateral;
- (B) the existing hazards or risk of loss, damage, or destruction; and
- (C) the amount, term, and conditions of the loan.

(3) if the insurance is a condition of a loan, the credit union shall give the member written notice that clearly and conspicuously states;

- (A) that insurance is required in connection with the loan; and
- (B) that the member may purchase or provide the insurance from a carrier of the member's choice, or the member [who is borrowing] may assign any existing insurance coverage.

(4) An officer, director, employee, or committee member of a credit union may not accept anything of value from an insurance agent, insurance company, or other insurance provider offered to induce the credit union to sell or offer to sell insurance or other related products or services to the members of the credit union.

(5) If a credit union replaces an existing loan or renews a loan and sells the member new credit life or disability insurance, the credit union shall cancel the prior insurance and provide the member with a refund or credit of the unearned premium or identifiable charge before selling the new insurance to the member.

(6) The person selling or offering for sale any insurance product in any part of a credit union's office or on its behalf must be at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

(b) **Unsafe and Unsound Practice.** It is an unsafe and unsound practice for any director, officer, or employee of a credit union, who is involved in the sale of insurance products to members, to take advantage of that business opportunity for personal profit. Recommendations to members to buy insurance should be based on the benefits of the policy, not the compensation received from the sale.

(c) **Prohibited Practices.** A director, officer, or employee of a credit union may not engage in any practice that would lead a member to believe that a loan or extension of credit is conditional upon either:

(1) The purchase of an insurance product from the credit union or any of its affiliates;
or

(2) An agreement by the member not to obtain, or a prohibition on the member from obtaining, an insurance product from an unaffiliated entity.

Source: The provisions of this §91.402 adopted to be effective March 14, 2004, 29 TexReg 2306; amended to be effective March 13, 2006, 31 TexReg 1647; reviewed and amended to be effective March 14, 2010, 35 TexReg 1978.

§91.403. Debt Cancellation Products; Federal Parity.

(a) **Authority.** Provided it complies with this section, a credit union may offer any debt cancellation product a federal credit union is permitted to offer. For the purposes of this section, a debt cancellation product is a two-party agreement between the credit union and the member under which the credit union agrees to waive, suspend, defer, or cancel all or part of a member's obligation to pay an indebtedness under a lease, loan, or other extension of credit upon the occurrence of a specified event. Debt cancellation products are considered loan products, not insurance products and, consequently, are not regulated by the Texas Department of Insurance. The credit union may offer debt cancellation products for a fee. If the debt cancellation product is offered for a fee basis, then the member's participation must be optional.

(b) **Anti-tying and Refund Rules.** For any debt cancellation product offered by a credit union:

(1) The credit union may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the member entering into a debt cancellation product with the credit union; and

(2) The debt cancellation product must provide for refunding or crediting to the member any unearned fees resulting from termination of the member's participation in the product, whether by prepayment of the extension of credit or otherwise. Any unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method. Before the member purchases the debt cancellation product, the credit union must state in writing that the purchase of the debt cancellation product is optional, the conditions for and method of calculating any refund of the debt cancellation fee, including when fees are considered earned by the credit union, and that the member should carefully review all of the terms and conditions of the debt cancellation agreement prior to signing the agreement.

(c) **Notice to Department.** A credit union must notify the commissioner in writing of its intent to offer any type of debt cancellation product at least 30 days prior to the product being offered to members. The notice must contain a statement describing the type(s) of debt cancellation product(s) that the credit union will offer to its membership.

(d) Risk Management and Controls. Before offering any debt cancellation products, each credit union's board of directors, shall adopt written policies that establish and maintain effective risk management and control processes for these products. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A credit union should also assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation program. In addition, the policies shall establish reasonable fees, if any, that will be charged, the appropriate disclosures that will be given, and the claims processing procedures that will be utilized.

(e) For purposes of this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

Source: The provisions of this §91.403 adopted to be effective May 13, 1999, 24 TexReg 3473; readopted to be effective August 2, 2002, 27 TexReg 6874; amended to be effective June 8, 2003, 28 TexReg 4411; amended to be effective March 6, 2005, 30 TexReg 1064; readopted to be effective October 27, 2005, 30 TexReg 7505; reviewed and amended to be effective March 14, 2010, 35 TexReg 1979.

§91.404. Purchasing Assets and Assuming Deposits and Liabilities of another Financial Institution.

(a) Scope. A credit union must obtain the approval of the Department before purchasing all or substantially all of the assets and/or assuming certain deposits and other liabilities of another financial institution. This section does not apply to purchases of assets that occur as a result of a credit union's ordinary and ongoing business of acquiring obligations of its members.

(b) Approval Requirement.

(1) A credit union must file an application and obtain the written approval of the Department before entering into any type of purchase and assumption agreement.

(2) In determining whether to approve an application under this section, the Department will consider the purpose of the transaction, its impact on the safety and soundness of the credit union, and any effect on the credit union's existing members. The Department may deny the application if the transaction would have a negative effect on any of those factors.

Source: The provisions of this §91.404 adopted to be effective March 14, 2010, 35 TexReg 1980.

§91.405. Records Retention and Preservation.

(a) General. Every credit union shall keep records of its transactions in sufficient detail to permit examination, audit and verification of financial statements, schedules, and reports it is required to file with the Department or which it issues to its members. Credit union accounts, books and other records shall be maintained in appropriate form and for the minimum periods prescribed by this section. The retention period for each record starts from the last entry or final action date and not from the inception of the record.

(b) Manner of maintenance. Records may be maintained in whatever manner, or format a credit union deems appropriate; provided, however, the records must clearly and accurately reflect the

information required, provide an adequate basis for the examination and audit of the information, and be retrievable easily and in a readable and useable format. A credit union may contract with third party service providers to maintain records required under this part.

(c) Permanent retention. It is recommended that the following records be retained permanently in their original form:

- (1) charter, bylaws, articles of incorporation, and amendments thereto; and
- (2) currently effective certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of United States savings bonds.

(d) Ten year retention. Records which are significant to the continuing operation of the credit union must be retained until the expiration of ten years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later. The records are:

- (1) minutes of meetings of the members, the board of directors, and board committees;
- (2) journal and cash record;
- (3) general ledger and subsidiary ledgers;
- (4) for active accounts, one copy of each individual share and loan ledger or its equivalent;
- (5) comprehensive annual audit reports including evidence of account verification; and
- (6) examination reports and official correspondence from the department or any other government agency acting in a regulatory capacity.

(e) Five year retention. The following records must be retained until the expiration of five years following the making of the record or the last entry thereon or the expiration of the applicable statute of limitations, whichever is later:

- (1) records related to closed accounts including membership applications, joint membership agreements, payable on death agreements, signature cards, share draft agreements, and any other account agreements; loan agreements; and

- (2) for an active account, any account agreement which is no longer in effect.

(f) Other records. Subject to applicable law, any other type of document not specifically delineated in this rule may be destroyed after five years or upon expiration of an applicable statute of limitations, whichever is longer.

(g) Data processing records. Provisions of this section apply to records produced by a data processing system. Output reports that substitute for standard conventional records or that provide the only support for entries in the journal and cash record should be retained for the minimum period specified in this rule.

(h) Protection and storage of records. A credit union shall provide reasonable protection from damage by fire, flood and other hazards for records required by this section to be preserved and, in selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(i) Records destruction. The board of directors shall adopt a written policy authorizing the destruction of specified records on a continuing basis upon expiration of specified retention periods.

(j) Records preservation. All state chartered credit unions are required to maintain a records preservation program to identify and store vital records in order that they may be reconstructed in the event the credit union's records are destroyed. Storage of vital records is the responsibility of the

board but may be delegated to the responsible person(s). A vital records storage center should be established at some location that is far enough from the credit union office to avoid the simultaneous loss of both sets of records in the event of a disaster. Records must be stored every calendar quarter within 30 days following quarter-end at which time records stored for the previous quarter may be destroyed. Stored records may be in any form which can be used to reconstruct the credit union's records. This includes machine copies, microfilm, or any other usable copy. The records to be stored shall be for the most recent month-end and are:

(1) a list of all shares and/or deposits and loan balances for each member's account. Each balance on the list is to be identified by an account name or number. Multiple balances of either shares or loans to one account shall be listed separately;

(2) a financial statement/statement of financial condition which lists all the credit union's assets and liability accounts;

(3) a listing of the credit union's banks, insurance policies and investments. This information may be marked "permanent" and updated only when changes are made.

(k) Records preservation compliance. Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance so long as the processor meets the minimum requirements of this section. Credit unions that have in-house capabilities shall make the necessary provisions to safeguard the backup of data on a continuing basis.

(l) Reproduction of records. A credit union shall furnish promptly, at its own expense, legible, true and complete copies of any record required to be kept by this section as requested by the department.

Source: The provisions of this §91.405 adopted to be effective May 11, 2000, 25 TexReg 3950; readopted to be effective December 18, 2003, 29 TexReg 235, amended to be effective March 13, 2006, 31 TexReg 1647; amended to be effective November 16, 2008, 33 TexReg 9073; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

§91.406. Credit Union Service Contracts.

A credit union may enter into contractual agreements with one or more credit unions or other organizations for the purpose of engaging in authorized activities that relate to electronic data processing, electronic fund transfers, or other member services on behalf of the credit union. Agreements must be in writing and shall advise all parties that the activities and services may be subject to commission rules and examination by the commissioner to the extent permitted by law.

Source: The provisions of this §91.406 adopted to be effective March 14, 2004, 29 TexReg 2635; readopted to be effective October 27, 2005, 30 TexReg 7505; reviewed and readopted to be effective October 19, 2009 34 TexReg 7657.

§91.407. Electronic Notification.

A credit union may, in accordance with written board policy, satisfy any "written" member notification requirement of the Act, commission rules, or the credit union's bylaws by electronic means provided:

(1) the member agrees in writing or electronically to use electronic instead of hard-copy notifications;

(2) the member has the ability to print or download the notification;

§91.408. User Fee for Shared Electronic Terminal.

A credit union that owns an electronic terminal that is connected to a shared network may impose a fee on a non-member for the use of that terminal if imposition of the fee is disclosed in compliance with applicable federal law.

Source: The provisions of this §91.408 adopted to be effective March 14, 2004, 29 TexReg 2636, readopted to be effective October 27, 2005, 30 TexReg 7505; reviewed and readopted to be effective October 19, 2009, 34 TexReg 7657.

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(4) the credit union must keep accurate and detailed records of the fees paid under the policy.

(c) 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, without providing any residual physical benefits.

(d) 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.

(e) Review by board. A credit union shall implement and maintain 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. 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.

(f) Waiver by commissioner. The commissioner in the exercise of discretion may grant a waiver in writing of the limitations described in subsection (b) of this section.

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.

§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; 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 which 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 part 715 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 715).
- (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 §715.8 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 715).
- (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 of the following three 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.

Subchapter F. Accounts and Services

§91.601. Share and Deposit Accounts.

- (a) Accounts. A credit union may offer any type of share or deposit accounts and prescribe the terms and conditions relating to the accounts as established by written policies approved by the board of directors.
- (b) Policies and procedures. Each credit union, before accepting any funds for any share or deposit accounts, shall adopt, implement and maintain appropriate policies and procedures which address, at a minimum, asset liability management and adequate liquidity levels.
- (c) Limitation on deposit accounts. Acceptance of funds from a depositor authorized by the Act that is not within the credit union's field of membership is subject to the limitations prescribed by §123.201(b) of the Act. This restriction does not apply to a credit union accepting for deposit the money of:
 - (1) the United States or any agent or instrumentality of the United States;
 - (2) this or another state; or
 - (3) a political subdivision of this or another state.
- (d) Nonmember deposit. The written documentation evidencing a deposit under subsection (c) of this section shall clearly and conspicuously disclose that the funds are not insured. This section does not apply to insured deposits from other credit unions or deposits received by a credit union with a low-income designation.

Source: The provisions of this §91.601 adopted to be effective August 14, 2000, 25 TexReg 7633; readopted to be effective February 24, 2004, 29 TexReg 2393; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.

§91.602. Solicitation and Acceptance of Brokered Deposits.

- (a) Definitions.
 - (1) Brokered deposit means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.
 - (2) Deposit broker means a person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with financial institutions; or the business of placing funds with financial institutions for the purpose of selling interests in the deposit to third parties.
- (b) Limitation. A credit union that has a net worth ratio of less than six percent as defined in §91.901 of this title (relating to Reserve Requirements) or is not deemed adequately capitalized by its insuring organization may not accept, renew or roll over any brokered deposit unless it has been granted a waiver by the commissioner.
- (c) Risk management and due diligence. Credit unions utilizing brokered deposits shall ensure that proper risk management practices are in place, including appropriate written asset/liability management policies, business strategies, concentration limits, monitoring procedures, and contingency funding plans. In addition, credit unions must implement adequate due diligence procedures before entering into a business relationship with a deposit broker.

Source: The provisions of this §91.602 adopted to be effective August 14, 2000, 25 TexReg 7634; amended to be effective July 11, 2004, 29 TexReg 6629; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.

§91.608. Confidentiality of Member Records.

(a) Confidentiality of members' accounts. No credit union officer, director, committee member or employee may disclose to any person, other than the member, or to any company or governmental body the individual savings, shares, or loan records of any credit union member, contained in any document or system, by any means unless specifically authorized to do so in writing by such members, except as follows:

(1) reporting credit experience to a bona fide credit reporting agency, another credit union, or any other bona fide credit-granting business and/or merchants information exchange, provided that applicable state and federal laws and regulations pertaining to credit collection and reporting are followed;

(2) furnishing information in response to a valid request from a duly constituted government agency or taxing authority, or any subdivision thereof, including law enforcement agencies;

(3) furnishing information, orally or in written form, in response to the order of a court of competent jurisdiction or pursuant to other processes of discovery duly issuing from a court of competent jurisdiction;

(4) furnishing reports of loan balances to co-borrowers, co-makers, and guarantors of loans of a member and of share or deposit account balances, signature card information, and related transactions to joint account holders;

(5) furnishing information to and receiving information from check and draft reporting, clearing, cashing and authorization services relative to past history of a member's draft and checking accounts at the credit union; or

(6) as otherwise authorized by law, including access by examiners of the Department.

(b) Non-disclosure statement. Nothing in this rule shall prohibit the credit union from releasing the name and address of members to assist the credit union in its marketing efforts or sale of third party products, provided, however, that the credit union obtains a written non-disclosure statement providing assurances that the information will be used exclusively for the benefit of the credit union and no other.

(c) Privacy policy. Each credit union shall develop, implement and maintain a written policy on the protection of nonpublic personal information of individual members in its possession. This policy shall be consistent with the disclosure and reporting requirements applicable to federally insured credit unions as addressed in Part 716 of NCUA Rules and Regulations.

(d) Relation to federal laws. This section shall not be construed as altering or affecting any applicable federal statute, regulation, or interpretation that affords a member greater protection than provided under this section.

Source: The provisions of this §91.608 adopted to be effective August 14, 2000, 25 TexReg 7634; amended to be effective July 11, 2004, 29 TexReg 6630; readopted to be effective March 2, 2007, 32 TexReg 1101; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.

§91.610. Safe Deposit Box Facilities.

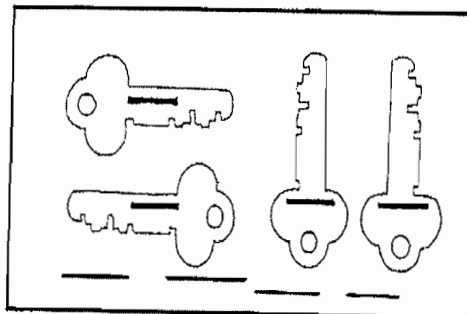
(a) Purpose. Finance Code §59.110 requires credit unions to imprint keys issued to safe deposit boxes with the institution's routing number. In addition, it requires a report to the Department of Public Safety if the routing number is altered or defaced so that the correct routing number is illegible. The purpose of this section is to clarify the requirements of the noted section of the Finance Code.

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

(1) Credit union — This term includes all state or federal credit unions that have been assigned a routing number unique to that institution.

(2) Routing number — The number printed on the face of a share draft or check in fractional form or in nine-digit form that identifies a paying financial institution.

(c) Imprinting requirements. A credit union which has been issued a routing number shall imprint that routing number on safe deposit box keys on either the head of the key or the shank of the key if there is adequate room. The typical locations to be used are indicated in the following instructions and diagram. The imprint can be made anywhere on the key that has the required space available. When positioning the die on the key, be careful to place the die on the key where it will imprint on a flat surface and not in the area of the key cuts or on any of the shank ridges or grooves. Imprinting in these areas may interfere with the proper working of the key in the lock and may cause damage. In the event these standard areas for the location of the imprint are unavailable, either because of grooves on the key shank or the fact that the head of the key already has names and other numbers imprinted on it, then the credit union may attach to the key a tag imprinted with the routing number. The tag used must be of such a nature as to be secure. Thus, a paper or cardboard tag or a tag affixed with string will not be acceptable. However, any other medium such as plastic or metal which can retain an imprint of a number shall be acceptable. The tag may be attached in any way to assure its affixation to the key. Typically, this will mean inserting the tag or a device to affix the tag through the hole in the head of the key normally used for placing keys on key chains. The tag method shall not be used if there is adequate room on the key itself for imprinting the numbers. There are four standard areas for the location of the imprinted routing number. These include: the head of the key, the shank of the key, and either place on the reverse side of the key. The standard imprint areas are shown as follows.



(d) Branch designation. A credit union may, but is not required to, add a three-digit branch designation to its routing number. Thus, the main credit union facility should receive the

designation "001" and branch facilities should receive numbers consecutively beginning with "002" with successive numbers as needed. However, the credit union may control the branch numbering system used provided that the credit union maintains a master list of branch designations used for this purpose. The master list should be maintained at the main office of the credit union and shall include the three-digit branch designation and address of facility. The credit union then may imprint safe deposit box keys or tags with the routing number plus three-digit branch designation for full identification of the facility.

(e) Report of defaced or altered key. Within 10 days after an officer or employee of a credit union observes that a key used to access a safe deposit box has had the routing number altered or defaced or the tag removed, a report shall be prepared of such incident. The report shall be on a form promulgated by the Credit Union Department in the form of the attached **Exhibit A**. The report should be submitted to the Department of Public Safety, Attention: Criminal Law Enforcement, Box 4087, Austin, Texas 78773-0001. The report should be mailed no later than ten days after the incident. The credit union should retain one copy of the incident report for a period of three years. Nothing in this rule nor in the Finance Code §59.110 shall require a credit union to inspect routing numbers imprinted on a key or an attached tag to determine if the number has been altered or defaced.

(f) Effective date; applicability to existing keys. A credit union must imprint all safe deposit box keys on or after September 1, 1992. Additionally, the imprinting requirement applies to all keys issued prior to September 1, 1992. However, keys for boxes rented prior to September 1, 1992, need not be imprinted with the routing number unless and until a member presents a safe deposit box key at a credit union for access to a box. Nothing in this rule or the Finance Code §59.110 shall be construed to require a credit union to provide notice to its safe deposit box users or to otherwise require such members to present their keys for imprinting. However, on the first date after September 1, 1992, that a member presents a key which has not been imprinted, the credit union shall imprint the key with the routing numbers as required by Finance Code §59.110.

(g) Effect of change in routing number. In the event a credit union's routing number is changed as a result of a merger, acquisition, or other change, safe deposit box keys need not be replaced with a new routing number provided that the credit union maintains a master list of the routing numbers used to imprint keys.

Source: The provisions of this §91.610 adopted to be effective August 14, 2000, 25 TexReg 7635; readopted to be effective February 24, 2004, 29 TexReg 2393; amended to be effective July 8, 2007, 32 TexReg 3981; reviewed and readopted to be effective February 18, 2011, 36 TexReg 1569.

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.

§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.

§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.

CHAPTER 97

Subchapter A. General Provisions

§97.101. Meetings.

The time and place of regular and special meetings of the Commission and its committees shall be determined by the applicable chair and posted in accordance with the Open Meetings Act (Government Code, Chapter 551). The minutes of each meeting shall be in writing, shall be posted on the Department's website, and shall be available to any person to examine during the Department's regular office hours.

Source: The provisions of this §97.101 adopted to be effective March 8, 1984, 9 TexReg 1211; amended to be effective July 8, 1994, 19 TexReg 4946; amended to be effective December 9, 2001, 26 TexReg 9777; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4513.

§97.102. Delegation of Duties.

The Commissioner is authorized to complete all filings necessary to facilitate the rule making powers of the Commission. The Commissioner may draft and sign final adoption orders and other such instruments where delegation is not restricted by statute or rule. Notwithstanding other provisions of this rule, this authority is conveyed only to promote administrative efficiency and to expedite properly approved decisions of the Commission.

Source: The provisions of this §97.102 adopted to be effective May 4, 1995, 20 TexReg 3015; readopted to be effective June 19, 2001, 26 TexReg 4886; readopted to be effective February 14, 2005, 30 TexReg 1091, reviewed and amended to be effective July 12, 2009, 34 TexReg 4513.

§97.103. Recusal or Disqualification of Commission Members.

- (a) A commission member may not vote on or otherwise participate in the deliberation or decision of a matter pending before the commission:
 - (1) in which the commission member has a personal or private interest; or
 - (2) which directly affects the credit union of which the commission member is an officer, director, or member.
- (b) The term "personal or private interest" shall be given the meaning as prescribed in Texas Government Code, Section 572.058, and includes a direct personal or financial interest in a credit union or other matter which is the subject of commission action.
- (c) A commission member who is disqualified under subsection (a) of this section shall publicly disclose the fact to the commission in a meeting called and held in compliance with the Open Meetings Act, Texas Government Code, Chapter 551. The disclosure shall be entered in the minutes of the meeting.

- (d) A commission member who is recused or disqualified will be counted in determining a quorum.

Source: The provisions of this §97.103 adopted to be effective February 17, 1998, 23 TexReg 1303; readopted to be effective June 19, 2001, 26 TexReg 4886; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and readopted to be effective February 12, 2009, 34 TexReg 1452.

§97.104. Petitions for Adoption or Amendment of Rules.

(a) An interested party may submit a petition to the Department to adopt or amend a rule pursuant to Government Code, <*>2001.021. The petition must be in writing, must be directed to the commissioner, and must include:

- (1) a brief explanation of the proposed rule or of the proposed amendment to the rule;
- (2) the full text of the proposed rule, or, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and

- (3) any additional information the commissioner may request.

(b) If the petition complies with the requirements of subsection (a) of this section, the Department shall notify the applicant that the petition has been accepted for filing and will be processed in accordance with subsection (c) of this section. If the petition does not comply, the Department shall notify the applicant in writing of the deficiencies and give the applicant an opportunity to cure them by filing an amended petition. If the applicant does not file an amended petition curing the deficiencies by 5:00 p.m. on the 15th day following the date that the Department mailed a notice of deficiencies to the applicant, the petition shall be deemed denied for the reasons stated in the deficiency notice without the necessity of further action.

(c) Within 60 days of the date that a petition is accepted for filing, the Department must either deny the petition for reasons stated in writing or initiate a rulemaking proceeding.

Source: The provisions of this §97.104 adopted to be effective March 10, 2011, 36 TexReg 1658.

§97.105. Frequency of Examination.

The department shall perform an examination of each credit union authorized to do business under the Act at least once each year. Intervals between examinations shall not exceed 18 months, unless a longer interval is authorized in writing by the commission. In lieu of conducting an examination required by this rule, the commissioner in the exercise of discretion may accept examinations or reports from other credit union supervisory agencies or insuring organizations.

Source: The provisions of this §97.105 adopted to be effective March 8, 1984, 9 TexReg 1211; amended to be effective December 9, 2001, 26 TexReg 9777; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and readopted to be effective February 12, 2009, 34 TexReg 1452.

§97.107. Related Entities.

(a) Definition. For the purposes of this section, a related entity is defined as:

1. a credit union service organization in which a credit union has a material interest by contracting with, lending to or investing in the organization;
2. a subsidiary or affiliate of a credit union service organization that is wholly owned or controlled by a credit union;
3. an organization engaged primarily in the business of managing a credit union; and
4. third-party contractors providing electronic data processing, electronic fund transfers, or other member services to or on behalf of a credit union.

(b) General Supervision. A credit union should perform a thorough analytical assessment to identify, measure, monitor, and establish controls to manage the risks associated with related entities and avoid excessive risk-taking that may threaten the safety and soundness of a credit union. The department may review the risks associated with any related entity and its activities together with other credit union risks using its supervision-by-risk framework. The department shall assess the effectiveness of a credit union's oversight program of related entities, including its strategic planning, third-party selection process, and ongoing monitoring.

(c) Examination. A credit union's use of related entities to achieve its strategic goals does not diminish the responsibility of the department to ensure that the activity is conducted in a safe and sound manner and in compliance with applicable law. Although in most situations, these activities should be conducted in the same manner that would be expected if the credit union were conducting the activities directly, the department shall consider the following factors in determining whether to examine exam related entities:

1. the high risk or unusual nature of the activities conducted by the related entity for the credit union;
2. the significance of the activities conducted by the related entity for the credit union to the credit union's operations and income; and
3. the extent to which the credit union has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the related entity. The department may examine a related entity, as the commissioner deems necessary to ensure that a credit union is not assuming excessive risk.

(d) Examination Fee. The related entity shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). A credit union may elect to pay the fee on behalf of the related entity. The supplemental examination fee for a related entity may be waived or reduced if the commissioner determines it is appropriate.

Source: The provisions of this §97.107 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 4514.

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