



CREDIT UNION DEPARTMENT

DATE: **July 26, 2011**

TO: **State Chartered Credit Unions**

SUBJECT: **Change 29 to Update the Texas Rules for Credit Unions**

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

REMOVE PAGES

INSERT

AMENDMENTS OR NEW RULES

Rules for CUs Cover

Rules for CUs Cover

Updated Cover

Index – pages i and ii

Index – pages i and ii

Updated Index

91-29 thru 91-34

91-29 thru 91-34

Amended Rules 91.501, 91.502 and
91.516

91-69 thru 91-70

91-69 thru 91-70

Readopted Rule 91.808

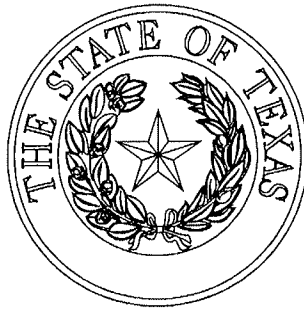
91-71 thru 91-72-b

91-71 thru 91-72-b

Readopted Rules 91.901 and 91.902

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 June 30, 2011 has a summary of the amended rules. Additional copies of these rules can be obtained from the Texas Credit Union League, 4455 LBJ Freeway, Farmers Branch, Texas 75244.



RULES FOR CREDIT UNIONS

adopted by the

CREDIT UNION COMMISSION

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

CHAPTER 91
CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

Series	Rule No.	Topic	Page
91.100		A. GENERAL RULES	
	91.101	Definitions and Interpretations	91-1
	91.103	Public Notice of Department Decisions	91-5
	91.104	Public Notice and Comment on Certain Applications	91-6
	91.105	Acceptance of Other Application Forms	91-6
	91.110	Protest Procedures for Applications	91-6
	91.115	Safety at Unmanned Teller Machines	91-7
	91.120	Posting of Notice Regarding Certain Loan Agreements	91-9
	91.121	Complaint Notification	91-9
	91.125	Accuracy of Advertising	91-10
91.200		B. ORGANIZATION PROCEDURES	
	91.201	Incorporation Procedures	91-11
	91.202	Bylaw and Articles of Incorporation Amendments	91-12
	91.203	Share and Deposit Insurance Requirements	91-13
	91.205	Use of Credit Union Name	91-13
	91.206	Underserved Area Credit Unions – Secondary Capital Accounts	91-14
	91.208	Notice of Known or Suspected Criminal Violations	91-15
	91.209	Call Reports and Other Information Requests	91-15
	91.210	Foreign Credit Unions	91-16
91.300		C. MEMBERS	
	91.301	Field of Membership	91-19
	91.302	Election or Other Membership Vote by Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting	91-21
	91.310	Annual Report to Membership	91-22
	91.315	Members' Access to Credit Union Documents	91-22
91.400		D. POWERS OF CREDIT UNIONS	
	91.401	Purchase, Lease, or Sale of Fixed Assets	91-23
	91.402	Insurance for Members	91-24
	91.403	Debt Cancellation Products; Federal Parity	91-25
	91.404	Purchasing Assets and Assuming Deposits and Liabilities of another Financial Institution	91-26
	91.405	Records Retention and Preservation	91-26
	91.406	Credit Union Service Contracts	91-28
	91.407	Electronic Notification	91-28
	91.408	User Fee for Shared Electronic Terminal	91-28-a

CHAPTER 91
CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

Series	Rule No.	Topic	Page
91.500		E. DIRECTION OF AFFAIRS	
	91.501	Director Eligibility and Disqualification	91-29
	91.502	Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures	91-31
	91.503	Change in Credit Union President	91-32
	91.510	Bond and Insurance Requirements	91-32
	91.515	Financial Reporting	91-33
	91.516	Audits and Verifications	91-34
91.600		F. ACCOUNTS AND SERVICES	
	91.601	Share and Deposit Accounts	91-35
	91.602	Solicitation and Acceptance of Brokered Deposits	91-35
	91.608	Confidentiality of Member Records	91-36
	91.610	Safe Deposit Box Facilities	91-37
91.700		G. LENDING POWERS	
	91.701	Lending Powers	91-41
	91.703	Interest Rates	91-42
	91.704	Real Estate Lending	91-42
	91.705	Home Improvement Loans	91-45
	91.706	Home Equity Loans	91-45
	91.707	Reverse Mortgages	91-46
	91.708	Real Estate Appraisals or Evaluations	91-46
	91.709	Member Business Loans	91-47
	91.710	Overdraft Protection	91-52
	91.711	Purchase and Sale of Member Loans	91-53
	91.712	Plastic Cards	91-54
	91.713	Indirect Lending	91-55
	91.714	Leasing	91-56
	91.715	Exceptions to the General Lending Policies	91-58
	91.716	Prohibited Fees	91-58
	91.717	More Stringent Restrictions	91-58-a
	91.718	Charging Off or Setting Up Reserves	91-58-a
	91.719	Loans to Officials and Senior Management Employees	91-58-a
	91.720	Small-Dollar, Short-Term Credit	91-58-b

Subchapter E. Direction of Affairs

§91.501. Director Eligibility and Disqualification.

(a) Board Representation. The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) Qualifications. A member may not serve as director of a credit union if that member:

(1) has been convicted of any criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);

(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;

(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;

(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;

(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) Director continuing education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to

achieve and maintain professional competence. The policy should be appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s).

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six (6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

Source: The provisions of this §91.501 adopted to be effective May 11, 2000, 25 TexReg 3951; amended to be effective March 14, 2004, 29 TexReg 2636; amended to be effective July 8, 2007, 32 TexReg 3978; reviewed and amended to be effective July 10, 2011, 36 TexReg 4110.

§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. Directors and committee members may be paid reasonable fees, in accordance with written board policy, for attending duly called meetings for conducting appropriate credit union business. A credit union may not pay a meeting fee 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) Advance Notice of Payment of Fees. A credit union shall provide written notice to the Department of its intent to pay or modify director or committee member meeting fees at least 30 days prior to commencing the new or modified program. The written notice shall include a copy of the board policy, the proposed or revised fee schedule, and a description of the anticipated cost and the credit union's ability to absorb the increase in operating costs. The credit union shall provide any additional information requested by the commissioner.

(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.

§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, 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.

§91.804. Custody And Safekeeping.

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

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

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

§91.805. Loan Participation Investments.

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

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

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

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

(4) limits its aggregate investment in participations to an amount less than 50% of the credit union's net worth.

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

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

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

- (1) investments purchased and sold during the month;
- (2) unrealized market gains or losses compared to book value for each security at month's end;
- (3) fair or market value of each security;
- (4) total book value of investments outstanding at month's end;
- (5) unrecorded and unreported obligations to buy or sell investments; and
- (6) amount of investments, other than designated depositories, in other institutions that are not fully insured by the Federal Deposit Insurance Corporation, National Credit Union Administration, or federal or state governments or their agencies.

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

- (1) embedded options;
- (2) remaining maturities greater than three years; or
- (3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

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

- (1) fair value of each security in the entire portfolio;
- (2) fair value of the entire security portfolio as a whole; and
- (3) credit union's net worth.

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

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

Subchapter I. Reserves and Dividends

§91.901. Reserve Requirements.

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

(1) Net worth means the retained earnings balance of the credit union as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management, the insuring organization, or the commission. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. Net worth does not include the allowance for loan and lease losses account.

(2) Net worth ratio means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(3) Total assets means the average of the total assets as measured using one of the following methods:

(A) average quarterly balance. The average of quarter-end balances of the four most recent calendar quarters; or

(B) average monthly balance. The average of month-end balances over the three calendar months of the calendar quarter; or

(C) average daily balance. The average daily balance over the calendar quarter; or

(D) quarter-end balance. The quarter-end balance of the calendar quarter as reported on the credit union's call report.

(b) In accordance with the requirements of §122.104 of the Act, state-chartered credit unions shall set aside a portion of their current gross income, prior to the declaration or payment of dividends, as follows:

(1) A credit union with a net worth ratio below 7.0% shall increase the dollar amount of its net worth reserves by the following amounts at the indicated intervals until its net worth ratio equals 7.0% of total assets:

(A) in the case of a monthly dividend period, net worth must increase monthly by an amount equivalent to at least 0.0334% of its total assets; and

(B) in the case of a quarterly, semi-annual or annual dividend period, net worth must increase quarterly by an amount equivalent to at least 0.1% per quarter of its total assets.

(2) For a credit union in operation less than ten years and having assets of less than \$10 million, a business plan must be developed that reflects, among other items, net worth projections consistent with the following:

(A) 2.0% net worth ratio by the end of the third year of operation;

(B) 3.5% net worth ratio by the end of the fifth year of operation;

(C) 6.0% net worth ratio by the end of the seventh year of operation; and

(D) 7.0% net worth ratio by the time it reaches \$10 million in total assets or by the end of the tenth year of operation, whichever is shorter.

(3) Whenever the net worth ratio falls below 7.0%, the credit union shall transfer a portion of its current period net income to its regular reserve in such amounts as described in paragraph (1) of this subsection.

(4) Special reserves. In addition to the regular reserve, special reserves to protect the interest of members may be established by board resolution or by order of the commissioner, from current income or from undivided earnings. In lieu of establishing a special reserve, the commissioner may direct that all

or a portion of the undivided earnings and any other reserve fund be restricted. In either case, such directives must be given in writing and state with reasonable specificity the reasons for such directives.

(5) Insuring organization's capital requirements. As applicable, a credit union shall also comply with any and all net worth or capital requirements imposed by an insuring organization as a condition to maintaining insurance on share and deposit accounts. For federally-insured credit unions this includes all prompt corrective action requirements contained within Part 702 of the NCUA Rules and Regulations.

(6) Decrease in Required Reserve Transfer. The commissioner, on a case-by-case basis, and after receipt of a written application, may permit a credit union to transfer an amount that is less than the amount required under paragraph (1) of this subsection. A credit union shall submit such statements and reports as the commissioner may, in his discretion, require in support of a decreased transfer request. The application must be received no later than 10 days before the quarter end and shall include but not be limited to:

- (A) An explanation of the need for the reduced transfer amount;
- (B) Financial statement reflecting the fiscal impact of the required transfer; and
- (C) Documentation supporting the credit union's ability to resume the required transfer

at a future date certain.

(c) Revised business plan for new credit unions. A credit union that has been in operation for less than ten years and has assets of less than \$10 million shall file a written revised business plan within 30 calendar days of the date the credit union's net worth ratio has failed to increase consistent with its current business plan. Failure to submit a revised business plan, or submission of a plan not adequate to either increase net worth or increase net worth within a reasonable time; or failure of the credit union to implement its revised business plan, may trigger the regulatory actions described in subsection (b)(4) of this section.

(d) Unsafe practice. Any credit union which has less than a 6.0% net worth ratio may be deemed to be engaged in an unsafe practice pursuant to §122.255 of the Finance Code. The determination may be abated if, the credit union has entered into and is in compliance with a written agreement or order with the department or is in compliance with a net worth restoration or revised business plan approved by the department to increase its net worth ratio. If a credit union has a net worth ratio below 6.0% or is otherwise engaged in an unsafe practice, the department may impose the following administrative sanctions in addition to, or in lieu of, any other authorized supervisory action:

- (1) all unencumbered reserves, undivided earnings, and current earnings are encumbered as special reserves;
- (2) dividends and interest refunds may not be declared, advertised, or paid without the prior written approval of the commissioner; and
- (3) any changes to the credit union's board of directors or senior management staff must receive the prior written approval of the commissioner.

(e) Supervisory action. Notwithstanding any requirements in this section, the department may take enforcement action against a credit union with capital above the minimum requirement if the credit union's circumstances indicate such action would be appropriate.

Source: The provisions of this §91.901 adopted to be effective August 14, 2000, 25 TexReg 7636; amended to be effective July 11, 2004, 29 TexReg 6633; amended to be effective November 11, 2007, 32 TexReg 7923; reviewed and amended to be effective November 8, 2009, 34 TexReg 7628; reviewed and readopted to be effective June 20, 2011, 36 TexReg 4152.

§91.902. Dividends.

- (a) Dividend eligibility shall be prescribed by written board policy.
- (b) When a credit union is subject to a cease and desist order or is otherwise notified that it is deemed to be in a troubled condition or engaged in an unsafe practice, the credit union must obtain prior written approval of the commissioner before it declares or pays any dividend or interest refund. A request for approval to pay a dividend or interest refund under this section must be in writing and must include the following supporting information:
 - (1) the proposed dividend and/or interest refund rate and the estimated total dollar amount of payment;
 - (2) an analysis of the credit union's ability to make the payment from current earnings without incurring an operating loss for the period; and
 - (3) an explanation of the progress in resolving the areas of concern detailed in the cease and desist order or the examiner's findings schedule of the most recent report of examination.

Source: The provisions of this §91.902 adopted to be effective August 14, 2000, 25 TexReg 7638; readopted to be effective February 24, 2004, 29 TexReg 2393; amended to be effective November 11, 2007, 32 TexReg 7924; reviewed and readopted to be effective June 20, 2011, 36 TexReg 4152.

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