
Credit Union Department



NEWSLETTER

No. 11-05

www.tcu.d.state.tx.us

November 30, 2005

Bank Secrecy Act Questionnaire

Each federally-insured credit union is responsible for establishing and maintaining procedures to assure and monitor compliance with the requirements of the Bank Secrecy Act (BSA). Part 748.2 of the NCUA Rules and Regulations specifies that the compliance program must be in writing, approved by the credit union's board of directors, and reflected in the board minutes.

Due to the significant monetary penalties for failure to comply with the BSA requirements, the Department is seeking additional information regarding each credit union's compliance program. An electronic copy of the [attached](#) BSA questionnaire was sent to credit unions on November 18, 2005. Each credit union must complete and return the BSA questionnaire to the Credit Union Department by **December 16, 2005**. Questionnaires received after this date will be subject to a late filing penalty as provided by Commission Rule 91.209.

Voting Rights of Board Chair

The Department has received several inquiries concerning the voting rights of a board of directors' chair. Standard rules of order indicate that the chair of the board of directors, if he or she is a member of the board, has the same voting rights as any other director. The chair can protect impartiality of his/her position by exercising this voting right only when his or her vote would affect the outcome. In such cases, the chair can either vote after the initial vote of the board but prior to announcing the result and thereby change the results, or can abstain. If the chair abstains, he/she announces the results of the vote with no mention of his/her own vote.

Whether a chair votes or abstains can alter the outcome of any motion requiring a majority vote when there is either a tie vote or one more vote in the affirmative than in the negative. Because a majority of affirmative votes is necessary to adopt a motion, a tie vote rejects the motion. If there is a tie without the chair's vote, the chair can vote in the affirmative, thereby creating a majority for the motion. If

the chair abstains from voting in such a case, however, the motion is lost (because it did not receive a majority).

If there is one more affirmative vote than negative votes without the chair's vote, the motion is adopted if the chair abstains. If he/she votes in the negative, however, the result is a tie and the motion is therefore lost.

Status of Home Equity Interpretation Safe Harbors

Although the judge has issued a letter outlining his proposed ruling in the lawsuit over the validity of certain rules adopted by the Commission regarding interpretations of home equity constitutional provisions, no order has been signed. Until such an order is signed, the safe harbors provided by the Commission's rules remain in effect. It is uncertain exactly when the order will be signed since the plaintiffs have filed a pleading with the Court to expand the ruling to invalidate Section 153.5 in its entirety. Defendants have thirty days to respond to this expanded petition, so this issue, the judge's order and any subsequent appeal of his order could be delayed for several months. The Department will provide credit unions with notice when the order is issued and the effect of the order and any appeal on the safe harbors provided by the rules.

Rule Review

The Department is currently reviewing and considering for re-adoption, revision, or repeal Rules **93.101** (Scope; Definitions; Severability), **93.201** (Party Status), **93.202** (Computation of Time), **93.203** (Ex Parte Communications), **93.204** (Presiding Officer or Body), **93.205** (Notice of Hearing), **93.206** (Default), **93.207** (Service), **93.208** (Delegation of Authority), **93.209** (Subpoenas), **93.210** (Protective Orders; Motions to Compel), **93.211** (Administrative Record), **93.212** (Proposal for Decision), **93.213** (Appearances and Representation), **93.301** (Finality and Request for SOAH Hearing), **93.302** (Referral to ADR), **93.303** (Hearings of Applications to Incorporate, Amend Bylaws, or Merge or Consolidate), **93.304** (Appeals of Applications for Certificates of Authority), **93.305** (Appeals of all Other Applications for which no Specific Procedure is Provided by this Title), **93.401** (Appeals of Cease and Desist Orders and Orders of Removal), **93.402** (Stays), **93.501** (Request for Hearing to Appeal on Order of Conservation), **93.502** (Retention of Attorney), **93.601** (Motion for Appeal to the Commission), **93.602** (Decision by the Commission), **93.603** (Oral Arguments before the Commission), **93.604** (Motion for Rehearing), and **93.605** (Final Decisions and Appeals). Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures for the Department. In addition, the Department invites comments on how to make these rules easier to understand. For example:

- ❑ Do the rules organize the material to suit your needs? If not, how could the material be better organized?
- ❑ Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?
- ❑ Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

- ❑ Would a different format (grouping and order of section, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- ❑ Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Written comments regarding these rules should be received no later than **December 23, 2005**. Any comments should be sent to Kerri T. Galvin, Assistant Commissioner and General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699 or by e-mail to kerri.galvin@tcud.state.tx.us.

Newsletter Notice

As required by statute, each state agency must obtain an annual confirmation from individuals receiving monthly publications at no charge. Specifically, the law requires that a notice be placed in three consecutive issues of the publication, and that anyone desiring to continue to receive the publication must so indicate in writing. Please submit the enclosed form to our office if you desire to continue to receive the Department's newsletter each month. Faxes are welcomed ([Click here for the form](#)).

If you responded to last month's notice, you need not take any further action.

Filing of IRS Form 990, Authorization Exempt From Income Tax

Section 15.412 of the Texas Finance Code authorizes the Department to file a consolidated Form 990, Group Return with the Internal Revenue Service on behalf of all credit unions under the Department's jurisdiction. The Department was authorized by the Internal Revenue Service on June 18, 1976 to file a consolidated group return under Group Exemption Letter #2742.

Included with the mailing of the year-end call reports will be an authorization form to be completed by each credit union and returned to this office on or before **January 23, 2006**. The credit union will certify that the information submitted is true and correct and will authorize the Department to include the credit union's information in the group return.

Please note that credit unions having unrelated business income of \$1,000 or more are also individually responsible for filing an IRS Form 990-T.

Credit Union Member Complaints Filed

During the past fiscal year, the Department processed 91 complaints from credit union members involving 50 credit unions. The complaints included issues in loan collection, addition of single-interest insurance premiums to loan balances, disputed ACH deposits, disputed NSF charges and a myriad of others. For every written complaint that is submitted, numerous calls from disgruntled members are either explained satisfactorily by Department staff, or the complainant does not follow-up with a formal written complaint. Although some of the complaint issues are the member's misinterpretation of a loan contract, account agreement, or other agreement, a number of complaints are about member service issues and credit union policies. The Department appreciates the promptness with which all credit unions respond to written member complaints.

Applications Approved

Applications approved since October 31, 2005 include:

<u>Credit Union</u>	<u>Changes or Groups Added</u>
Field of Membership Change(s) Approved:	
First Service Credit Union (Houston) (#1 & #2)	See Newsletter No. 09-05
Texas Health Resources Credit Union (Dallas)	See Newsletter No. 09-05
Education Credit Union (Amarillo)	See Newsletter No. 09-05
Articles of Incorporation Change(s) Approved:	
Entex South Texas Credit Union (Kenedy)	See Newsletter No. 09-05
Gulf Employees Credit Union (Groves)	See Newsletter No. 09-05
THD District 17 CU (Bryan)	50 Years to Perpetuity
TEC/TWC CU (San Antonio)	50 Years to Perpetuity
Midwestern State University CU (Wichita Falls)	50 Years to Perpetuity
BNSF CU (Amarillo)	50 Years to Perpetuity
Lehrer Interests CU (Garwood)	50 Years to Perpetuity
Midland Teachers CU (Midland)	50 Years to Perpetuity

Applications Received

The following applications were received and published in the November 25, 2005 issue of the Texas Register:

Field of Membership Expansion(s):

First Service Credit Union (Houston) -- To permit employees of Republic Waste Services of Texas, Ltd who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

Applications Received (Continued):

MemberSource Credit Union (Houston) -- To permit employees of Trans-Tec Machine Inc. and their subsidiaries, affiliates or successors, who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcud.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Merger(s) or Consolidation(s) Changes:

An application was received from **Pegasus Credit Union** (Dallas) seeking approval to merge with **Magpegasus Federal Credit Union** (Midland). **Pegasus Credit Union** will be the surviving credit union.

The following application was received and will be published in the December 9, 2005 issue of the Texas Register:

An application was received from **Dallas County Credit Union** (Dallas) seeking approval to merge with **Texans Credit Union** (Richardson), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Publishing Notice of Applications in the Texas Register

In order to meet the submission deadlines for the applicable issues of the *Texas Register*, it is necessary for the Department to establish the schedule included below. Completed applications received after the deadline for the month cannot be published until the following month.

Published In

Deadline for Receipt

December, 2005

Friday, December 16

January, 2006

Friday, January 13

February, 2006

Friday, February 10

Holiday Schedule for TCUD

The Department's office will be closed on **December 26** in observance of Christmas.



All of us join in wishing you a wonderful Holiday Season with the very best of everything in the coming new year!