CREDIT UNION COMMISSION
Rules Committee Meeting
Texas Higher Education Coordinating Board
1200 East Anderson Lane
Austin, Texas
February 20, 2014

AGENDA

TAB | PAGE
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A. | 4
   a. | Call to Order (2:00 p.m.) – Chair Rob Kyker
      b. | Ascertain Quorum
      c. | Appoint Recording Secretary
      d. | Invitation for Public Input Regarding Rulemaking for Future Consideration
B. | 7
   | Receive and Approve Minutes of the Rules Committee Meeting of June 14, 2012
C. | 24
   a. | Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets
   b. | Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.405 Concerning Records Retention and Preservation
   c. | Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Repeal 7 TAC Part 6, Chapter 91, Subchapter K (relating to Residential Mortgage Loan Originators Employed by a CUSO) in its entirety
   d. | Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Part 6, Chapter 93 (relating to Administrative Proceedings) in its entirety
   e. | Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification
   f. | Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures
   g. | Discussion of and Possible Vote to Establish Date for Next Committee Meeting (June 19, 2014 at 2:00 p.m.)
D. | 32
   | Adjournment

In the event the Committee does not finish deliberation of an item on the first day for which it was posted, the Committee might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as Interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Linda Cleven by mail, telephone, or email.
Driving Directions to the Texas Higher Education Coordinating Board Offices

1200 East Anderson Lane
Austin, Texas 78752
(512) 427-6101

From IH-35:

- Exit Hwy 183 South
- Turn East onto 183 South access road (Coming from the North, turn left; From the South, turn right)
- Get in far left lane and Make a U-Turn under 183 at Cameron Road (the first light)
- The Coordinating Board is on the right (just after Luby's)

From Austin-Bergstrom International Airport:

- Take Hwy 71 West
- Exit to Hwy 183 North
- Continue along 183 North and take the Cameron Rd exit onto E Anderson Ln
- The Coordinating Board is on the right past Luby's after the intersection
CALL TO ORDER

TEXAS CREDIT UNION COMMISSION

RULES COMMITTEE

Committee Members

- Rob Kyker, Chairman
- Sherri B. Merket
- Allyson “Missy” Morrow
- Kay Stewart
- A. John Yggerst
- Manuel “Manny” Cavazos, Ex-Officio

Legal Counsel

- Joe Thrash

Staff

- Harold E. Feeney
- Stacey McLarty
- Isabel Velasquez
FUTURE COMMITTEE MEETING DATES

The committee has transitioned from a regular meeting schedule to an "as needed" or "subject to the call of the chair" schedule. If a meeting is necessary, it will normally begin at 2:00 p.m. on the day before a regularly scheduled commission meeting.
RULES COMMITTEE MEETING MINUTES

A copy of the minutes of the Committee’s meeting held on June 14, 2012, is located under TAB B.

RECOMMENDED ACTION: The Department requests that the Committee approve the minutes as presented.

RECOMMENDED MOTION: I move that the minutes of the Committee’s June 14, 2012, meeting be approved as presented.
A. CALL TO ORDER – Chairman Manuel Cavazos called the meeting to order at 1:00 p.m. in the conference room of the Credit Union Department office, Austin, Texas pursuant to Chapter 551 of the Government Code. Other members present included Gary Janacek, Gary Tuma, and ex-officio member Thomas Butler. Rob Kyker was absent due to a scheduling conflict. Commission Member John Yoggerst also attended the meeting but did not participate in the deliberations of the Committee. Assistant Attorney General Nancy S. Fuller was also in attendance. Staff members in attendance were Harold E. Feeney, Commissioner and Betsy Loar, Assistant Commissioner and General Counsel. Chairman Cavazos appointed Isabel Velasquez as recording secretary. The Chair also inquired and the Commissioner confirmed that the notice of the meeting was properly posted (June 4, 2012, TRD#2012003796).

- INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION – Chairman Cavazos invited public input on matters regarding rulemaking for future consideration by the committee. There was none.

B. RECEIVE MINUTES OF PREVIOUS MEETING (February 16, 2012)

Mr. Janacek moved for approval of the minutes of the February 16, 2012 meeting as presented. Mr. Tuma seconded the motion, and the motion was unanimously adopted.
C. UNFINISHED BUSINESS

(a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.808. Commissioner Feeney noted that the Commission had previously approved for publication and comment the proposed amendments to Rule 91.808. He reported that no comments were received during the comment period with respect to the proposed amendments. Mr. Feeney further indicated that the amendments would establish a consistent standard between Rules 91.803 and 91.808.

After a short discussion, Mr. Tuma moved to recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.808 as previously published in the Texas Register. Mr. Janacek seconded the motion and the motion was unanimously adopted.

(b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve the Department’s Legislative Recommendations and Authorize its Submission for Possible Consideration during the 83rd Regular Session of the Legislature. Commissioner Feeney reported that as required by Sections 15.103 and 15.405 of the Finance Code, the Department is required to periodically study the Credit Union Act and report its recommendations to the Legislature for consideration. He indicated that staff had completed its study and highlighted the substantive provisions of the proposed recommended changes.

The Chairman opened the floor for public testimony on the proposed recommendations.
Melodie Durst – Executive Director, Credit Union Coalition of Texas. Mrs. Durst thanked the Department for taking the Coalition’s suggestions into consideration and indicated the Coalition would support the proposal as currently drafted.

Mr. Janacek questioned whether the issue regarding the limitation on the number of advisory/honorary directors that a credit union may appoint had been addressed in the proposal. Commissioner Feeney responded that the suggestion made at the last meeting to remove the limitation was considered but, at this time, staff was not recommending a change. He indicated that the issue was more complicated than just eliminating a restriction and that further research was needed.

After a short discussion, Mr. Tuma moved to recommend that the Commission approve the Department’s Legislative Recommendations and authorize its submission for possible consideration during the 83rd Regular Session of the Legislature. Mr. Janacek seconded the motion and the motion was unanimously adopted.

Commissioner Feeney suggested that the Committee may want to group the next two agenda items into one motion. There were no objections.

D. NEW BUSINESS

(a) Discussion of and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Section 91.7000 Concerning Certificates of Indebtedness.
(b) Discussion of and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Section 91.8000 Concerning Discovery of Confidential Information.

Commissioner Feeney noted that as required by Section 2001.39 of the Government Code, staff reviewed Rules 91.7000 and 91.8000. He indicated that staff believes that the reasons for adopting both rules continue to exist and that neither rule needs to be modified at this time.

After a brief discussion, Mr. Janacek moved to recommend that the Commission find that the reasons for adopting Rules 91.7000 and 91.8000 continue to exist and that the rules be readopted without change. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(c) Discussion of and Possible Vote to Approve the Department’s 2013-2016 Rule Review Plan as Required by Section 2001.039, Government Code. Commissioner Feeney noted that Section 2001.39, Government Code, requires a state agency to review every rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. In accordance with that requirement, staff has developed a new 4-year plan under which the Commission will review all of its existing rules.

After a short discussion, Mr. Janacek moved to recommend that the Commission adopt the proposed 2013-2016 Rule Review Plan. Mr. Tuma seconded the motion and the motion was unanimously adopted.

(d) Discussion of and Possible Vote to Recommend to the Credit Union Commission that the Committee Meet only when there are New or
Potentially Contentious Rules or Amendments to be Considered and that Non-Substantive Action on Rules may be brought directly to the Commission without Committee Recommendation. Commissioner Feeney noted that the Committee had just recommended the adoption of a new 4-year rule review plan. At this point, however, staff does not envision that there will be a need for substantive revisions for many of the existing rules. He suggested that the Committee may want to consider migrating from its existing regular meeting schedule to an “as needed” schedule.

After a brief discussion, Mr. Janacek moved to recommend to the Commission that the Committee meet only when there are new or potentially contentious rules or amendments to be considered and that non-substantive action on rules may be brought by staff directly to the Commission without Committee recommendation. Mr. Tuma seconded the motion and the motion was unanimously adopted.

ADJOURNMENT -- There being no other items to come before the Committee, and without objection, the meeting was adjourned at 1:23 p.m.

Distribution:

Legislative Reference Library
NEW BUSINESS

The Committee will discuss and possibly vote on recommendations to the Credit Union Commission concerning the following items:

a. Adopt the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets.

b. Adopt the Proposed Amendments to 7 TAC Section 91.405 Concerning Records Retention and Preservation.

c. Repeal 7 TAC, Part 6, Chapter 91, Subchapter (relating to Residential Mortgage Loan Originators Employed by a CUSO) in its entirety.

d. Readopt 7 TAC, Part 6, Chapter 93 (relating to Administrative Proceedings) in its entirety.

e. Approve the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification.

f. Approve the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

RECOMMENDED ACTION: The Department requests that the Committee take action as indicated on the documents contained on Tab C.
PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.

2. The proposed rule is presented to the commission for consideration.

3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.

4. The proposed rule is adjusted by staff (if required), furnished to legal counsel, and transmitted to the Texas Register for publication as a "proposed" rule.

5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.

6. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.

7. The rule is adopted as "final" and transmitted to the Texas Register for publication as a final rule. The rule becomes effective 20 days following filing for publication.

8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

Rules, which are approved by the commission for emergency adoption, are transmitted to the Texas Register for filing. These rules become effective immediately upon filing unless another effective date is specified. They can be effective only for 120 days with a renewal provision for an additional 60 days -- a maximum of 180 days. "Day one" is the day of filing or the date specified as the effective date. While these emergency rules are in effect, regular rules should be initiated using the normal procedure described above. The Department rarely adopts emergency rules.
PROCEDURES FOR REQUIRED RULE REVIEW

Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. To comply with this requirement, the Commission follows the procedure below:

1. Every four years, the Commission adopts and publishes a Rule Review Plan, which establishes a date for the required review of each existing rule.

2. At least sixty days prior to a particular rule's scheduled review date, the Department publishes notice in the Newsletter reminding interested persons of the review and encouraging comments on the rules up for review.

3. Staff reviews each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule's structure as well as the specific language used is both clear and understandable.

4. If in reviewing existing rules, staff believes certain amendments may be appropriate, proposed amendments are prepared by staff and presented to the Rules Committee for review.

5. At a public meeting, the Rules Committee accepts public testimony on each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.

6. The Committee's recommendation is presented to the Commission for consideration.

7. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.

8. If the Commission approves the proposal for publication, it is transmitted to the Texas Register for publication as a "proposed" rule amendment.

9. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.

10. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in re-publication of the proposal.
11. The rule as amended is adopted and transmitted to the *Texas Register* for publication as a final rule. The rule becomes effective 20 days following filing for publication.

12. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.
C. (a) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.401.

**BACKGROUND:** At its October meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.401. No comments were received in regards to the proposed amendments.

**RECOMMENDED ACTION:** The Department requests that the Committee recommend that the Commission adopt the proposed amendments to Rule 91.401.

**RECOMMENDED MOTION:** I move that we recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.401 as previously published in the *Texas Register*.
The Credit Union Commission (the Commission) adopts 91.401 concerning Purchase, Lease, or Sale of Fixed Assets with no changes to the text published in the November 1, 2013 issue of the Texas Register (38 TexReg 7561). The amendments modernize language related to fixed asset investment limitations and clarify the documents required to accompany an application requesting a waiver or modification of the fixed asset investment limits.

The amendments are proposed as a result of the Texas Credit Union Department’s (Department) general rule review.

The Commission received no comments on these proposed changes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

The amendments are adopted under Texas Finance Code, 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code 124.351 which sets out permitted investments for credit unions.

The specific section affected by the proposed amendments is Texas Finance Code, 123.110.
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 net worth 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 in the form of financial statements with supporting assumptions 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, loan delinquency report, and a budget reflecting the new fixed asset.
C. (b) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.405.

BACKGROUND: At its October meeting, the Commission approved for publication and comment in the Texas Register the proposed amendments to Rule 91.405. No comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission adopt the proposed amendments to Rule 91.405.

RECOMMENDED MOTION: I move that we recommend that the Commission adopt the proposed amendments to 7 TAC Section 91.405 as previously published in the Texas Register.
The Credit Union Commission (the Commission) adopts amendments to 91.405 concerning Records Retention and Preservation with no changes to the text published in the November 1, 2013 issue of the Texas Register (38 TexReg 7562). The amendments eliminate an outdated example of effective certificates or licenses to operate under programs of various government agencies, specifically, a certificate to act as issuing agent for the sale of United States savings bonds.

The amendments are proposed as a result of the Texas Credit Union Department’s general rule review.

The Commission received no comments on these proposed changes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

The amendments are adopted under Texas Finance Code, 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code 124.351 which sets out permitted investments for credit unions.

The specific section affected by the proposed amendments is Texas Finance Code, 123.110.
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.

(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.
C. (c) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Repeal 7 TAC Part 6, Chapter 91, Subchapter K.

BACKGROUND: At its October meeting, the Commission approved for publication and comment in the Texas Register the proposed repeal of 7 TAC Part 6, Chapter 91, Subchapter K. No comments were received in regards to the proposed repeal.

RECOMMENDED ACTION: The Department requests that the Committee recommend that the Commission repeal 7 TAC Part 6, Chapter 91, Subchapter K.

RECOMMENDED MOTION: I move that we recommend that the Commission repeal 7 TAC Part 6, Chapter 91, Subchapter K as previously published in the Texas Register.
The Credit Union Commission adopts the repeal of existing rule 7 TAC, Part 6, Chapter 91, Subchapter K, relating to Residential Mortgage Loan Originators Employed by a CUSO, in its entirety as published in the November 1, 2013 issue of the Texas Register (38 TexReg 7564).

The repeal is a result of provisions enacted in the 83rd Session of the Legislature (2013) that were contained within SB 1004. The provisions repealed Texas Finance Code, 15.024, and included amendments to Texas Finance Code, 156.101, 158.104, and 180.002, relating to rulemaking, examination, investigation, inspection and enforcement for residential mortgage loan originator employees of credit union subsidiary organizations. The amendments transferred responsibility for the regulation of these persons from the Credit Union Commissioner to the Department of Savings and Mortgage Lending and the Finance Commission. Therefore, the need for Chapter 91 Subchapter K has been eliminated.

The Commission received no comments with respect to the proposed repeal.

The repeal is proposed under Texas Finance Code, 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and Texas Finance Code 15.024 (repealed), which had authorized the Commission to adopt rules regarding residential mortgage loan servicer employees of credit union subsidiary organizations.

The specific sections affected by the proposed repeal are Texas Finance Code, 15.024, 156.101, 158.104, and 180.002.
Subchapter K. Residential Mortgage Loan Originators
Employed by a CUSO


(a) Definitions
   (1) Credit union subsidiary organization (CUSO) shall have the same meaning as in Finance Code §180.002.
   (2) Residential mortgage loan originator shall have the same meaning as in Finance Code §180.002.
   (3) Nationwide Mortgage Licensing System and Registry shall have the same meaning as in Finance Code §180.002.

(b) Licensing. A residential mortgage loan originator employed by a CUSO shall be licensed as required by Finance Code Chapters 156 and 180, and shall comply with all requirements for obtaining, renewing, and maintaining a license under those chapters and under 7 TAC Chapter 80.

(c) Supervision and Examination. The commissioner shall examine, inspect, investigate, and enforce compliance with all legal and regulatory requirements applicable to residential mortgage loan originators employed by a CUSO. The commissioner may examine, inspect, or investigate the employees of a CUSO as frequently as the commissioner considers it necessary or advisable to safeguard the public or to efficiently enforce applicable law.

§91.2001. Books and Records; Examinations; Reimbursement of Travel Costs.

(a) A residential mortgage loan originator employed by a CUSO shall maintain, at the location specified in his or her application, books and records as required by 7 TAC §80.13, and shall promptly make the books and records available to the department on request. The department, through its examiners, shall periodically examine these books and records. The examination shall be conducted in a manner consistent with 7 TAC §80.20.
(b) If the Department must travel out of state to conduct an examination of a residential mortgage loan originator employed by a CUSO, because the required records are maintained at a location outside of the state, the CUSO will be required to reimburse the Department for its actual costs incurred in connection with the out of state travel, including transportation, lodging, meals, and any other reasonably related costs.


If the commissioner receives a signed written complaint alleging improper acts or omissions by a residential mortgage loan originator employed by a CUSO, the commissioner shall investigate as set out in Finance Code §15.409 and 7 TAC §80.15. If the investigation finds grounds for suspending or terminating the residential mortgage loan originator’s license, the commissioner shall promptly refer the matter to the Department of Savings and Mortgage Lending for further action.


To ensure the effective supervision and enforcement of Finance Code Chapters 156 and 180 and all applicable rules, the commissioner may take any of the following actions:

1. order restitution against a residential mortgage loan originator employed by a CUSO for violations of applicable laws;

2. impose an administrative penalty on a residential mortgage loan originator employed by a CUSO, subject to Finance Code §180.202; or

3. issue orders or directives as provided by Finance Code §180.203.
§91.2004. Mortgage Call Reports.

A CUSO that has an approved license during the reporting period must file a call report as required by 7 TAC §80.23. The report must be submitted to and comply with the requirements of the Nationwide Mortgage Licensing System and Registry.


A residential mortgage loan originator shall provide a prospective mortgage loan applicant with the appropriate loan status form as prescribed by 7 TAC §80.22.

§91.2006. Required Disclosures.

A residential mortgage loan originator employed by a CUSO shall provide the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan: “COMPLAINTS REGARDING RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CREDIT UNION SERVICE ORGANIZATION SHOULD BE SENT TO THE CREDIT UNION DEPARTMENT, 914 EAST ANDERSON LANE, AUSTIN, TEXAS 78752. TELEPHONE INQUIRIES MAY BE DIRECTED TO THE CREDIT UNION DEPARTMENT AT (512) 837-9236.”

§91.2007. False, Misleading, or Deceptive Practices.

A residential mortgage loan originator employed by a CUSO may not use any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services or contracts, or which violates the requirements of 7 TAC §80.10 and §80.11.
C. (d) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Part 6, Chapter 93.

**BACKGROUND:** Section 2001.39, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC Part 6, Chapter 93 and is recommending that no changes be made at this time.

Notice of review and a request for comments on the rules in this chapter was published in the November 29, 2013 issue of the Texas Register. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rules continue to exist.

**RECOMMENDED ACTION:** The Department requests the Committee recommend that the Commission readopt these rules.

**RECOMMENDED MOTION:** I move that we recommend that the Commission find that the reasons for adopting the rules contained in 7 TAC Part 6, Chapter 93 continue to exist and that all of the rules be readopted without change.
The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, 93.101 (Scope; Definitions; Severability.), 93.201 (Party Status), 93.202 (Computation of Time), 93.203 (Ex Parte Communications), 93.204 (Contested Case Hearing; Informal Disposition), 93.205 (Notice of Hearing), 93.206 (Default), 93.207 (Service of Documents on Parties), 93.208 (Delegation of Authority), 93.209 (Subpoenas), 93.210 (Discovery; Protective Orders; Motions To Compel.), 93.211 (Administrative Record), 93.212 (Proposal for Decision), 93.213 (Appearances and Representation), 93.214 (Recovery of Department Costs), 93.301 (Finality of Decision; Request for SOAH Hearing; Waiver of Appeal.), 93.302 (Referral to ADR), 93.303 (Hearings on Applications), 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 (Appeals of Orders of Conservation.), 93.502 (Retention of Attorney.), 93.601 (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) as published in the November 29, 2013 issue of the Texas Register. The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Credit Union Department (Department’s) general rule review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to readopt.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 93.101, 93.201, 93.202, 93.203, 93.204, 93.205, 93.206, 93.207, 93.208, 93.209, 93.210, 93.211, 93.212, 93.213, 93.214, 93.301, 93.302, 93.303, 93.305, 93.401, 93.402, 93.501, 93.502, 93.601, 93.602, 93.603, 93.604, and 93.605 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, 2001.039.
CHAPTER 93
Subchapter A. Common Terms

§93.101. Scope; Definitions; Severability.

(a) This chapter is applicable to contested cases arising under the Texas Credit Union Act.
(b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
   (1) ADR -- alternative dispute resolution.
   (2) ALJ -- administrative law judge employed by the State Office of Administrative Hearings.
   (3) Application -- shall have the same definition as in 91.101 (Definitions and Interpretations).
   (4) Contested case -- a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commissioner or the Commission after an opportunity for adjudicative hearing. A contested case at the Department commences upon the filing of a proper and timely request for hearing.
   (5) Party -- an applicant, a protestant, a respondent, or department staff, who is admitted as a party.
   (6) PFD -- a proposal for decision issued by an ALJ.
   (7) SOAH -- the State Office of Administrative Hearings.
   (8) TAC -- Texas Administrative Code.
(c) If any section of this chapter is found to be invalid, the invalidity shall not affect the validity of any other provision of this chapter.

Subchapter B. General Rules

§93.201. Party Status.

Party status will be conferred on persons or entities with a legal right, duty, privilege, power or current economic interest that may be directly affected by the outcome of the case. In a contested case, each party is entitled to an opportunity for hearing after reasonable notice of not less than 10 days and to respond and present evidence and argument on each issue involved in the case.


Unless otherwise required by law, in computing any period of time set forth in this chapter, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a state legal holiday. Time limits shall be computed using calendar days rather than business days.

§93.203. Ex Parte Communications.

(a) Upon receipt of a request for hearing and continuing until the time a motion for rehearing is denied, the time for ruling on such a motion has expired, or the proceeding is otherwise final, the commissioner and members of the commission may not communicate directly or indirectly with
any party or a representative of a party in a contested case in connection with any issue of fact or law in the contested case except upon notice and opportunity for each party to participate. (b) The commissioner and members of the commission may communicate ex parte with employees of the department who did not participate in any hearing in the case in order to utilize special skills or knowledge of the department's staff in evaluating the record in the case. Prohibited ex parte communications shall not include any written communication if the communicator contemporaneously serves copies of the communication on all parties to the contested case.

§93.204. Contested Case Hearing; Informal Disposition.

All hearings in contested cases will be conducted by SOAH pursuant to the Administrative Procedures Act and SOAH's procedural rules (1 TAC Chapter 155). At any time during the proceedings, the commissioner may make an informal disposition of a contested case by stipulation of the parties, agreed settlement, consent order, or default.


(a) A notice of hearing shall include:
(1) A statement of the time, place and nature of the hearing;
(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
(3) A reference to the particular sections of the statutes and rules involved, including a specific reference to 1 TAC Chapter 155;
(4) A short, plain statement of the matters asserted; and
(5) A description of the relief requested.
(b) At the discretion of the Commissioner, the following language set forth in bold capital letters may be included: "IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 10TH DAY AFTER THE DATE ON WHICH YOU WERE SERVED WITH THIS NOTICE, OR IF YOU FAIL TO ATTEND THE HEARING, THE COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT HEARING AND GRANT THE RELIEF SET FORTH IN THIS NOTICE. THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE DEPARTMENT AND WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS".
(c) If a written response is required, the response must be filed with the department and SOAH, and shall specifically admit or deny each of the assertions contained in the notice of hearing. Any assertion not denied will be deemed to be admitted. Failure of a party to timely file a written response as provided in this subsection shall entitle the department to the remedies relating to default set forth in §93.206 of this title (relating to Default).

§93.206. Default.

(a) If the parties in a contested case fail to file a written response as provided in §93.205 of this title (relating to Notice of Hearing), or fail to appear in person or through a legal representative on the date and at the time set for the hearing of the case, the commissioner may make an informal disposition of the case by default.
(b) In a case of default, the ALJ assigned to a contested case shall promptly grant the department's motion for remand for informal disposition.
(c) Prior to issuing a default order, the commissioner must find that notice was properly served on the defaulting party as prescribed by §93.207(a) of this title (relating to Service of Documents on Parties), and that the notice contained the language prescribed in §93.205(b) of this title. The default order may grant the relief requested in the notice of hearing and may deem admitted the matters set forth in the notice.

(d) Upon the motion of a party, the commissioner may, for good cause shown, set aside a default order and reschedule a hearing with SOAH. A motion to set aside a default order shall be filed with the commissioner not later than the 10th day after the date the party is served with the default order. If the commissioner does not, rule on the motion in writing within ten days after the motion is filed, the motion shall be considered denied by operation of law.

§93.207. Service of Documents on Parties.

(a) Unless otherwise specified in this chapter, notice to a party or a party’s representative in a contested case shall be by hand-delivery, by facsimile transmission, by email if all parties agree, or by regular, certified or registered mail, to the party’s last known address. Service by mail shall be complete when the properly addressed document is deposited in a post office or official depository under the care and custody of the United States Postal Service.

(b) A certificate by a party, who files a pleading stating that it has been served on all other parties, is prima facie evidence of service.

§93.208. Delegation of Authority.

Unless otherwise provided by law, any duty imposed on the commission or the commissioner may be delegated to a duly authorized representative. The provisions of any rule referring to the commission or the commissioner shall be construed to also apply to the duly authorized representative of the commission or the commissioner.

§93.209. Subpoenas.

(a) Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing shall file a written request with the commissioner setting forth the name and address of the witness, time and place of appearance, and any documents or tangible things sought to be produced. Each request shall contain a statement of the reasons why the subpoena should be issued.

(b) Upon a finding that a party has shown good cause for the issuance of the subpoena, the commissioner shall issue the subpoena as prescribed by Government Code §2001.089. The party requesting the subpoena shall be responsible for the payment of any fees or expenses as set out in Government Code §2001.103.

(c) Within ten days after service of the subpoena or, if the return date is less than ten days after service, before the return date, the person to whom the subpoena is directed may, serve upon the commissioner, the ALJ, and the attorney or party designated in the subpoena, written objection to the appearance or to the inspection or copying of any or all of the designated material. The party serving the subpoena shall have five days to file a written response to the objection. No oral argument shall be heard on the objection unless the commissioner or ALJ directs.
§93.210. Discovery; Protective Orders; Motions To Compel.

Except as modified by SOAH, parties have the discovery rights set out in the Administrative Procedure Act and the Texas Rules of Civil Procedure (TRCP). If a party or witness is asked to produce information that is exempt or privileged under the TRCP, the party, in addition to filing a written objection under §93.209(c) of this title (relating to Subpoenas), may make a motion with the ALJ for a protective order. The objecting party must request an in camera inspection as set out in 1 TAC §155.251(c)(7). The ALJ shall rule on all objections and motions under this section.

§93.211. Administrative Record.

(a) A record of all contested case proceedings shall be made as directed by SOAH. The department may assess costs against one or more parties.
(b) If a decision of the commission is appealed or otherwise taken to district court and the department is required to send to the court an original or certified copy of the record of the proceeding, or any part thereof, the appealing party shall pay all of the costs of preparing the record that is to be sent to the reviewing court. If more than one party appeals the decision, the cost of the preparation of the record shall be divided equally among the appealing parties or as agreed by the parties. The ALJ shall prepare and certify the record on behalf of the department and is responsible for transmitting the certified copy to the commissioner.


(a) Following the hearing, the ALJ shall review the evidence and testimony and prepare a PFD which shall include findings of fact and conclusions of law. The ALJ shall also prepare a proposed final order for the commissioner to sign adopting the PFD.
(b) The ALJ shall serve copies of the PFD and proposed final order on all parties of record within 30 days after conclusion of the hearing. The parties may submit exceptions to the PFD and replies to the exceptions. Exceptions, replies to exceptions, and related briefs must be submitted to the ALJ and to the department and, unless otherwise indicated, must be filed within deadlines established by the ALJ. The ALJ may amend the PFD and proposed final order in response to the exceptions, replies, or briefs submitted. If the ALJ makes substantive revisions, the ALJ shall circulate the amended PFD and proposed final order to the parties for additional exceptions and briefs before submitting the PFD and proposed final order to the commissioner.
(c) The ALJ shall submit the PFD and proposed order together with all materials listed in Government Code §2001.060, to the commissioner for review. No additional briefs may be submitted after the case is under submission to the commissioner for decision unless requested by the commissioner. The commissioner may:
   (1) Adopt the PFD and proposed final order, in whole or in part;
   (2) Modify and adopt the PFD and proposed final order, in whole or in part;
   (3) Decline to adopt the PFD and proposed final order, in whole or in part;
   (4) Remand for further proceedings by the ALJ, including for the limited purpose of receiving additional briefing or evidence from the parties on specific issues; or
   (5) Take another lawful and appropriate action with regard to the case.
(d) The commissioner shall make a final determination within 30 days of the date of receipt of the PFD and proposed final order.
§93.213. Appearances and Representation.

A party may be represented by an attorney or by an authorized representative, if that person observes proper decorum and the instructions of the ALJ. The ALJ may require any person appearing in a representative capacity to provide evidence of authority to appear as the party's representative.

§93.214. Recovery of Department Costs.

The ALJ may allocate costs incurred by the department among the parties in accordance with applicable law. Notwithstanding any other provision of this chapter, the ALJ may impose costs that are solely or primarily attributable to a particular party against that party.

Subchapter C. Appeals of Preliminary Determinations on Applications

§93.301. Finality of Decision; Request for SOAH Hearing; Waiver of Appeal.

(a) The commissioner shall issue a preliminary decision on all applications. Unless a party files a written appeal, the preliminary decision will become final when the time for appeal set out in Finance Code §122.007 or §122.011 expires. If a party submits a written waiver of its right to appeal, the preliminary decision becomes final on receipt of the waiver. If a party files a timely appeal, the commissioner's preliminary decision is withdrawn and the matter will be referred to SOAH. The commissioner may, at the commissioner's sole discretion, refer any matter to SOAH for hearing prior to entering a preliminary decision.

(b) Notwithstanding subsection (a) of this section, if an application is approved without modification, and no protest or comment was received during the notice period, the commissioner may determine that the preliminary decision should become final immediately.

§93.302. Referral to ADR.

The commissioner may order the parties to participate in non-binding ADR if the commissioner determines that any two of the following conditions are present:

1. the parties have not engaged in meaningful negotiation;
2. the controversy is reasonably susceptible to compromise or resolution; or
3. ADR may produce cost savings.

§93.303. Hearings on Applications.

(a) If ADR is not used or if it fails to resolve the controversy, the commissioner shall furnish to the ALJ all information upon which the preliminary decision was based. In preparing a PFD, the ALJ shall consider this information along with the testimony and documentary evidence presented at the hearing.

(b) Burden of Proof for Unprotested Applications. The applicant must prove each of the statutory and regulatory requirements for approval by a preponderance of the evidence.

(c) Burden of Proof for Protested Applications. The applicant must prove each of the statutory and regulatory requirements for approval by a preponderance of the evidence. In cases in which field of membership is at issue, the protestant must establish by a preponderance of the evidence that overlapping fields of membership will unreasonably harm the protestant. For the purposes of this section, to constitute "unreasonable harm" an overlap must threaten the protestant’s welfare and
stability or its financial viability to such an extent that it would adversely impact its safety and soundness as a credit union.

§93.305. Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title.

If ADR is not used or fails to resolve the controversy, whether the application is protested or unprotested, the applicant has the burden to prove each of the applicable statutory and regulatory requirements for approval by a preponderance of the evidence.

Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal

§93.401. Appeals Of Cease And Desist Orders And Orders Of Removal.

(a) Unless the board of directors or person affected by the order files a timely written appeal, the commissioner’s cease and desist order or order of removal becomes final when the applicable statutory time for appeal expires.
(b) If a timely request for appeal is filed, the commissioner shall forward the matter to SOAH to set a hearing.
(c) The hearing on a cease and desist order or order of removal is closed to the public. The orders, correspondence, and records relating thereto, are confidential and cannot be revealed to the public. Parties with access to confidential information during the contested case must sign a confidentiality agreement as provided in §91.8000(f) of this title (relating to Discovery of Confidential Information).
(d) At the hearing, the commissioner must establish a prima facie case that the statutory or regulatory violations or the unsafe or unsound practices justify the cease and desist order or order of removal.

§93.402. Stays.

Where an order by its terms, by statute, or by these rules will become final before a hearing can be held, any aggrieved party who has filed a timely request for hearing under this chapter may file a written request with the commissioner to stay part or all of the order until the matter has been heard and a final decision issued. The commissioner may grant a stay where the respondent has adequately demonstrated a reasonable defense which might result in the respondent prevailing on the merits at the hearing, the respondent will be irreparably injured in the absence of the stay, the stay would not substantially or irreparably harm other interested persons, and the stay would not jeopardize the public interest or contravene public policy.

Subchapter E. Appeals of Orders of Conservation


(a) Unless the credit union’s former board of directors files a timely written appeal, the commissioner’s order of conservation becomes final when the statutory time for appeal expires.
(b) If a timely request for hearing is filed, the commissioner shall forward the matter to SOAH to set a hearing. The hearing date shall be no earlier than the 11th day and no later than the 30th day after the date on which the appeal is received.
(c) The credit union’s former board of directors has the burden to prove by a preponderance of the evidence that the board should regain control of the credit union.

(d) The SOAH hearing on an order of conservation is closed to the public. All orders and correspondence relating thereto are confidential and may not be revealed to the public. Parties with access to confidential information during the contested case must sign a confidentiality agreement as provided in §91.8000(f) of this title (relating to Discovery of Confidential Information).

(e) Parties must file exceptions to the PFD within five days of the date of service of the PFD. Replies to exceptions shall be filed within eight days of the date of service of the PFD.


In the event a credit union retains an attorney or hires other persons to assist the credit union in contesting or satisfying the requirements of an order of conservation, the commissioner shall authorize the payment of reasonable fees and expenses for such persons as expenses of the conservatorship. In order for the commissioner to determine the reasonableness of the fees and expenses, the credit union must submit a billing statement showing the billable rate, the number of hours claimed, and a detailed description of services performed and related expenses incurred. The credit union may also submit copies of other bids received for the services, research substantiating the reasonableness of the fees charged, or any other evidence the credit union believes may support the reasonableness of the fees and expenses. Any fees or expenses the commissioner deems unreasonable shall not be authorized for payment.

Subchapter F. Appeal of Commissioner’s Final Determination to the Commission

§93.601. Appeal to the Commission.

(a) An aggrieved party may appeal the commissioner’s final decision to the Commission. The appeal must be in writing and must be filed within the applicable statutory deadline.

(b) The appeal must state the identities and interests of the parties, the particular matters complained of, any specific objections, and the action sought from the Commission.

(c) The Commission shall act on the appeal within the applicable statutory deadline or within sixty days, whichever is earlier.

§93.602. Decision by the Commission.

The Commission shall consider the questions raised in the appeal, as well as any additional matters pertinent to the appeal, whether or not included in the motion for appeal. Decisions by the Commission must be based on testimony and other evidence in the hearing record. The Commission may adopt or decline to adopt, with or without changes, all or part of the commissioner’s decision or the ALJ’s PFD and the underlying findings of fact and conclusions of law. The Commission may remand the proceeding for further consideration by the commissioner with or without reopening the hearing. The Commission may take any additional actions it considers to be just and reasonable, as permitted by law.
§93.603. Oral Arguments Before the Commission.

Any party wishing to present oral arguments to the Commission must make a written request at least fifteen days before the scheduled Commission meeting. The request must state the length of time the party seeks. The Commission, may grant or deny the request. If the request is granted, the Commission will determine the amount of time allotted and the issues on which oral argument is allowed. The Commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that Commission members may have.

§93.604. Motion for Rehearing.

(a) The procedures and deadlines of APA §2001.146 govern the filing of a motion for rehearing with the Commission.
(b) The Commission by written order may shorten the times for filing motions for rehearing and replies and for Commission action or overruling by operation of law, provided all parties agree in writing to the modifications.

§93.605. Final Decisions and Appeals.

(a) The Commission's decision is final and appealable:
   (1) if a motion for rehearing is not filed on time, upon the expiration of the period for filing a motion for rehearing; or
   (2) if a motion for rehearing is filed on time, on the date the order overruling the motion for rehearing is rendered; or the motion is overruled by operation of law.
(b) A person who is aggrieved by a final decision of the Commission in a contested case may seek judicial review of the decision. Judicial review of a final decision is under the substantial evidence rule.
C. (e) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification.

BACKGROUND: While credit union directors may have broadly defined legal duties, their role in evaluating management, providing strategic oversight, and dealing with the complexity of today’s regulatory environment has never been more tested – or more critically dependent on their knowledge and understanding of the complex issues facing the credit unions. Whether the issue is financial resilience, corporate strategy, executive compensation, or regulatory compliance, continuing education becomes increasingly more important to ensure directors not only possess adequate knowledge to manage the affairs of the credit union but also remain informed about pertinent issues, including changing governance requirements.

Accordingly, the proposed amendments require the development and implementation of an annual plan for continuing education designed to augment the knowledge, skills or competence, and the performance of the credit union’s directors. The rule allows credit unions to tailor the annual plans to the individual needs of each director and the operations of each credit union.

RECOMMENDED ACTION: The Department requests the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.501 concerning director eligibility and disqualification.
The Credit Union Commission (the Commission) proposes amendments to \textasteriskhook 91.501 concerning Director Eligibility and Disqualification. The amendment requires the development and implementation of an annual plan for continuing education of directors.

The amendments are proposed to ensure that credit unions provide for the ongoing education of directors to achieve and maintain professional competence.

Stacey McLarty, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There the agency is not aware of any effect on small or micro businesses as a result of adopting the amended rule. Any economic cost anticipated to the credit union system or to individuals for complying with the amended rule, if adopted, is expected to be minimal, but cannot be calculated with certainty, as the amount of time and resources required for compliance depends on the specific characteristics of each credit union and director.

Written comments on the proposal must be submitted within 30 days after its publication in the \textit{Texas Register} to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, \textasteriskhook 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code \textasteriskhook 122.053, which sets forth the duties of directors, and under Texas Finance Code \textasteriskhook 122.054, which directs the commission to establish qualifications for a director.

The specific sections affected by the proposed amended rule are Texas Finance Code, \textasteriskhook 122.053 and 122.054.
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 paid a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer 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 shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that
is 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.
DIRECTOR/COMMITTEE MEMBER FEES, INSURANCE, REIMBURSABLE EXPENSES, AND OTHER AUTHORIZED EXPENDITURES

C.  (f) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

BACKGROUND: Section 122.062 of the Finance Code provides that a person may not receive compensation for serving as a director of a credit union. The statute does, however, provide several exceptions to this prohibition, including the payment of fees and reimbursement of expenditures authorized by commission rule. While the vast majority of credit union directors continue to serve without remuneration, the Commission promulgated Rule 91.502, which authorized directors to be paid reasonable fees for attending duly called meetings for conducting appropriate credit union business. Over the years the fees being paid have continued to escalate, raising the question of whether the fees are, in fact, reasonable. Although credit unions may be able to safely pay a higher level of meeting fees, from a public policy perspective, staff believes it is an appropriate time for the Commission to consider the matter to make sure that decisions to pay “meeting fees” are transparent and based on principles that ensure fairness, reasonableness, and accountability.

Accordingly, the proposed amendments clarify that reasonable meeting fees may be paid to directors, honorary directors, advisory directors, or committee members. The amendments also require disclosure of fees to the membership and grants enforcement authority to the Department to limit or prohibit a particular credit union from paying meeting fees.

RECOMMENDED ACTION: The Department requests the Committee recommend that the Commission approve the proposed amendments for publication and comment.

RECOMMENDED MOTION: I move that the Committee recommend that the Commission approve for publication and comment the proposed amendments to 7 TAC Section 91.502 concerning director/committee member fees, insurance, reimbursable expenses, and other authorized expenditures.
The Credit Union Commission proposes amendments to §91.502 concerning director fees and expenses. The amendments clarify that reasonable meeting fees may be paid to directors, honorary directors, advisory directors, or committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

The amendments are proposed to ensure that director fees are appropriate for the institution and transparent to the members.

Stacey McLarty, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. McLarty has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the Texas Register to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.062, which limits the compensation a director may receive for services.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.062.
91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

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

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

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are not reasonable under the circumstances. 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.
C. (g) Discussion of and Vote to Establish Date for Next Committee Meeting.

**BACKGROUND:** The next regular meeting of the Committee has been tentatively scheduled for June 19, 2014, at 2:00 p.m. in Austin.

**ADJOURNMENT**