



## CREDIT UNION DEPARTMENT

John J. Kolhoff  
Commissioner

Robert W. Etheridge  
Deputy Commissioner

September 17, 2020

Jennifer Jones, Executive Director  
Sunset Advisory Commission  
1501 North Congress  
6<sup>th</sup> Floor, Robert E. Johnson Building  
Austin, Texas 78701

Dear Ms. Jones:

On behalf of the Credit Union Commission, please find the attached response to the Sunset Staff Report. The Agency remains firmly committed toward ensuring a safe, sound, and viable credit union industry and submits the attached comments. We appreciate and support the sunset review process and recommendations included in the Staff Report toward enhancement of our programs. We have already begun implementation of actions to address many of the measures put forth within the report.

The Agency wishes to acknowledge the professional manner the review was performed. We commend the efforts of Merrell Foote, Janelle Roberts, Ashley Thomas, Janet Wood, and Erick Fajardo in providing a comprehensive and thoughtful review of our Agency.

Thank you for the opportunity to provide feedback regarding the Sunset Staff Report. We look forward to the public hearing process and welcome the thoughtful recommendations provided to help ensure credit union regulation remains effective toward maintaining a safe, sound, and competitive Texas credit union system that supports the citizens, communities, and economy.

Sincerely

A handwritten signature in blue ink that reads "John J. Kolhoff".

John J. Kolhoff  
Commissioner

JJK/cf



**Credit Union Commission**

**Response to**

**Sunset Advisory Commission**

**Staff Report**

**Submitted**

***September 2020***

## *Issue 1: The Department Lacks Key Data and Processes to Ensure Adequate Resolution of Regulatory Complaints.*

### **Recommendations**

#### ***Change in Statute***

##### **1.1 Require the department to track more comprehensive complaint and enforcement data to support analysis and guide regulatory activities.**

**Agency Response:** The Agency agrees that continued improvements in the data collection around the complaints processes is appropriate and remains committed to further evolution, including recommendations provided by the Sunset staff. While Department management has begun implementing changes relative to all recommendations provided, the Department has concerns regarding the recommended requirement to implement statutory changes. We believe a statutory change could potentially jeopardize our investigation authority or confidentiality provisions, if examination authority under the Texas Credit Union Act becomes legislatively distinct from complaint investigations. Further, Texas statute changes could become inconsistent with other federal and state laws relative to insiders and/or whistleblowers and/or federal preemption. Finally, the Agency believes that, if implemented, statutory complaint reporting processes should be carefully considered to not create a competitive disadvantage with federally chartered entities. While the Department believes statutory changes are not necessary and could be problematic, it concurs that additional tracking and improved processing is warranted; but, can be appropriately achieved through management action. The Agency has made improvements to the processes relative to documentation and supporting data collection and is currently implementing changes to its management information systems to track additional items including, but not limited to, restitution amounts, jurisdictional authority, enforcement authorities and regulatory actions utilized. The Department is also working to develop appropriate rules, and seeking subsequent Credit Union Commission approval, relative to complaint processes and reporting.

#### ***Management Action***

##### **1.2 Direct the department to regularly analyze and report on complaint and enforcement data and trends.**

**Agency Response:** The Agency agrees that aggregate analysis of complaint trends is important. While the Agency does provide quarterly analysis of complaint related data to the Commission as part of the Commission meeting packet, the analysis does not include all the recommendations made by the Sunset Staff in item 1.1. Further, while the information in the Commission packet is provided to the public prior to each meeting, it has not been historically preserved for continued access. The Department has initiated changes to ensure historic information is archived for review by the public. Further, the

Agency is working on rulemaking, with subsequent approval of the Credit Union Commission, to improve complaint processing and reporting.

**1.3 Direct the department to establish clear procedures for processing and investigating all complaints it receives.**

**Agency Response:** The Agency is committed to clear and concise operating procedures for the processing, investigation and resolution of complainant concerns. The Department has already begun implementing changes to internal policies and procedures to facilitate recommendations from the Sunset Staff and is committed to ensuring policies are updated by the December 2021 deadline. Further, the Agency is working on rulemaking, with subsequent approval of the Credit Union Commission, to improve complaint processing and reporting.

**1.4 Direct the department to disclose summary complaint resolution information to complainants and document final disposition.**

**Agency Response:** The Agency concurs that improved communication of the Departments stance on internal enforcement cases could help mitigate complainant confusion. Further, in cases where final enforcement authority of a regulation/criminal matter rests with another federal or state agency, the Department agrees to improve its communications to the complainant about the referral and its position on the potential violation. Finally, the Agency is development of rules, and seeking Credit Union Commission approval, to improve complaint processing and reporting.

**1.5 Direct the department to develop a penalty matrix.**

**Agency Response:** The Agency agrees that it does not have an all-encompassing matrix of potential actions that could be penalized or the related fines for such activities. The Department is working to implement such a list and determine how best to institute through the Credit Union Commission's rulemaking process while recognizing such fines typically relate to assessing investigation costs to the actor of specific violations. The Agency commits to instituting a Commission approved fine matrix by December 2021.

**1.6 Direct the department to more clearly communicate its authority, processes for investigating complaints, and complaint determinations.**

**Agency Response:** The Agency agrees with this recommendation.

**1.7 Direct the department to incorporate examiners' review of all jurisdictional complaints into the exam process.**

**Agency Response:** The Agency agrees with this recommendation.

## *Issue 2: The Department Should More Effectively Use Its SDSI Status to Provide Adequate Resources and Improve Operations.*

### **Recommendations**

#### ***Management Action***

##### **2.1 Direct the Credit Union Commission to implement a more streamlined and reliable fee assessment policy and process.**

**Agency Response:** The Agency does not agree that the current operating fee process has been unreliable in meeting its funding needs. The operating fee rule, last amended in 2009, has provided 42% funding growth to the Agency to appropriately oversee an industry with asset growth of 51% over that same period (FY2009-2019). Despite this budget growth, the Department continues to maintain a charter that in aggregate represents approximately 56% less operating fee costs than the federal credit union charter alternative. However, while individual credit unions become aware of the maximum operating fee they will pay when their first installment is billed, the Department does concede that individual credit union actual operating fees for the fiscal year are not fully known until the second billing occurs halfway through the fiscal year. Therefore, the Department is considering alternative operating fee options to address the Sunset Commission staff members concerns. The Agency is committed to finalizing that review and implementing appropriate changes by the August 31, 2021 deadline.

##### **2.2 Direct the commission to update its reserve fund policy to address long-term capital funding needs and maintain an adequate reserve balance.**

**Agency Response:** The Agency agrees with the recommendation and has already sought, and been granted, Credit Union Commission approval to increase the required reserve balance. The Agency will continue to evaluate the reserve levels, and seek the necessary Credit Union Commission approval, to ensure appropriate contingency funds are available.

##### **2.3 Direct the commission to implement an independent audit process for the department.**

**Agency Response:** The Agency agrees with the recommendation and commits to ensuring retention of a qualified vendor to provide independent audit services externally by August 31, 2021.

### *Issue 3: Texas Has a Continuing Need for the Credit Union Department.*

## **Recommendations**

### ***Change in Statute***

#### **3.1 Continue the Credit Union Department for 12 years.**

**Agency Response:** The Agency agrees with the recommendation.

#### **3.2 Require the department to develop a process for notifying credit unions about federal regulatory change that override state regulations.**

**Agency Response:** The Agency agrees improved communication is always a worthwhile endeavor. Despite the notifications provided within monthly newsletters, regular rule change notifications and direct email notifications, some industry participants may still be unaware of specific federal regulatory changes that may impact their authority under the parity provisions of the Texas Credit Union Act. The Department commits to instituting a more involved process with additional communication channels to help ensure all Texas state-chartered credit unions are provided an opportunity to be informed.

#### **3.3 Eliminate the statutory notarization requirement for articles of incorporation in new charter applications.**

**Agency Response:** The Agency agrees with this recommendation and is reviewing all outstanding application forms to address this issue and ensure all forms are appropriately updated. The Department commits to having all forms corrected by September 30, 2020.

#### **3.4 Update the standard across-the-board requirement related to board member training.**

**Agency Response:** The Agency concurs with the recommendations provided and plans to submit appropriate changes to the Credit Union Commission for approval.

### ***Management Action***

#### **3.5 Direct the department to regularly update its website content.**

**Agency Response:** The Agency has acted to address the concerns noted by the Sunset Commission staff. While the Department has acted to address almost all items noted by the Sunset Review Staff as of this writing, it commits to implementation of corrective measures in all areas by January 1, 2021.