

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEApril 15, 2016

MEETING LOCATIONState Finance Commission Bldg.
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

CONTACT INFORMATION.....Phone: (512) 936-6222
Email: Finance.Commission@fc.texas.gov
Website: www.fc.texas.gov

FUTURE MEETING DATESJune 10, 2016
August 19, 2016
October 21, 2016

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106*

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FINANCE COMMISSION AGENDA

Friday, April 15, 2016
8:30 a.m. or upon adjournment of the Audit Committee

Finance Commission Building
William F. Aldridge Hearing Room
2601 N. Lamar Blvd.
Austin, Texas 78705

Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A2, B3-4, C2-C6, and D7-D9

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

1. Introduction of new Finance Commission Members and Committee Assignments
2. *Review and Approval of the Minutes of the February 19, 2016 Finance Commission Meeting*
3. General Public Comment
4. Consent Agenda
5. Finance Commission Operations
6. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 29, 2016 Investment Officer Reports
 1. Office of Consumer Credit Commissioner
 2. Texas Department of Banking
 3. Department of Savings and Mortgage Lending
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2016 Second Quarter Financial Statements
 1. Office of Consumer Credit Commissioner
 2. Texas Department of Banking
 3. Department of Savings and Mortgage Lending
 - C. Report on Activities Relating to the Texas Financial Education Endowment Fund
7. Discussion of and Possible Vote to Take Action on the Finance Commission Agency Heads' Fiscal Year 2016 Mid-Term Accomplishment Reports

8. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System (bound separately from the packet)
9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals to 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review
3. *Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation*
4. *Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 82, Concerning Administration*
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 15-50168, in the United States Court of Appeals for the Fifth Circuit

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §15.42 Concerning Establishment and Closing of a Branch Office*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §15.2 and §15.3 Concerning Filing and Investigation Fees and Expedited Filings, Respectively*
4. *Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, §19.1 and §19.21 Concerning Trust Company Grandfathered Loans and Grandfathered Investments, Respectively*
5. *Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies*
6. *Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §21.43 Concerning Representative Trust Offices of Federally Chartered or Federally Insured Out-Of-State Banks and §21.44 Concerning Representative Trust Offices of Out-Of – State Trust Companies and Uninsured Banks*
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency's Certificate of Registration Will be Issued and Mailed
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §31.20 Concerning What Remedy is Available if the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available If the Department Does Not Comply with the Registration Processing Times of Check Verification Entities

13. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. 03-15-00341-CV, In the Third Court of Appeals, Austin, Texas.

State of Texas v. Myrtlewood Memorial Services, Inc. d/b/a Harlingen-Combes Memorial Cemetery, Cause No.D-1-GN-16-000565, 353rd District Court, Travis County, Texas.

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaint; d) Legal; and e) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation
Catherine Sims vs. Texas Department of Savings and Mortgage Lending, Cause No. D-1-GN-16-001194, 201st District Court, Travis County, Texas.
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73 Concerning Savings and Loan Associations, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapters 75-77 Concerning Savings Banks, Resulting from Rule Review
7. ***Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 79, Concerning Residential Mortgage Loan Servicers***
8. ***Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 80, Concerning Texas Residential Mortgage Loan Companies***
9. ***Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators***
10. Discussion of and Possible Vote to Take Action on Proposal and Publication for Comment of Amendments to 7 TAC §79.1, Concerning Definitions, and §79.2, Concerning Required Disclosure
11. Discussion of and Possible Vote to Take Action on Proposal and Publication for Comment of Amendments to 7 TAC §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports
12. Discussion of and Possible Vote to Take Action on Proposal and Publication for Comment of Amendments to 7 TAC §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports

NOTE: The Finance Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

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**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, February 19, 2016
9:00 a.m.**

The Finance Commission of Texas convened at 9:00 a.m. on February 19, 2016 with the following members present: Bill White, Chairman, Paul Plunket, Vice Chair, Susan Burton, Stacy London, Lori McCool, Will Lucas, Jonathan Newton, Victor Leal, Jay Shands, and Hector Cerna. Members absent: Cindy Lyons.

Chairman White announced that there was a quorum of the Finance Commission of Texas with 10 members present.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the December 18, 2016 Finance Commission Meeting	On Consent Agenda – Item A1 This item approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	3:00 start of discussion
3. Consent Agenda - Items A1, B2-B3, D3-D4	Jay Shands made a motion to approve the Consent Agenda. Susan Burton seconded and the motion passed.	3:34 start of discussion 3:47 vote
4. Finance Commission Operations	No Action Required.	4:03 start of discussion
5. Audit Committee Report		
A. Discussion and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ November 30, 2015 Investment Officer Reports 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner	Coming upon recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ November 30, 2015 Investment Officer Reports passed.	5:05 start of discussion 5:39 vote
B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2016 First Quarter Financial Statements 1. Texas Department of Banking 2. Department of Savings and Mortgage	Coming upon recommendation from the Audit Committee, no second is required and the motion to approve the Agencies’ 2016 First Quarter Financial Statements is passed.	5:55 start of discussion 6:07 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>Lending 3. Office of Consumer Credit Commissioner</p>		
<p>C. Presentation from the Texas Treasury Safekeeping Company</p>	No Action Required	6:22 start of discussion
<p>D. Report on Activities Relating to the Texas Financial Education Endowment Fund</p>	No Action Required.	6:32 start of discussion
<p>6. Discussion of and Possible Vote to take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff</p>	Deferred to Executive Session – no vote taken.	n/a
<p>7. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property</p>	Deferred to Executive Session – no vote taken.	n/a
<p>8. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation</p>	Deferred to Executive Session – no vote taken.	n/a
B. TEXAS DEPARTMENT OF BANKING		
<p>1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner’s Office; b) Bank</p>	No Action Required.	6:48 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest		
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC §5.101, Concerning Employee Training and Education Assistance Programs	On Consent Agenda – Item B2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §33.13 Concerning Processing Times for Certain Money Service Business Applications	On Consent Agenda – Item B3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Reappointment of Tom Elam as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the period January 1, 2016 to December 31, 2017	Hector Cerna made a motion to approve the Reappointment of Tom Elam as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the period January 1, 2016 to December 31, 2017. Jay Shands seconded and the motion passed.	28:49 start of discussion 29:17 vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §15.42 Concerning Establishment and Closing of a Branch Office	Jay Shands made a motion to approve the Proposal and Publication for Comment of Amendment to 7 TAC, §15.42 Concerning Establishment and Closing of a Branch Office. Will Lucas seconded and the motion passed.	30:19 start of discussion 32:08 vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §15.2 and §15.3 Concerning Filing and Investigation Fees and Expedited Filings, Respectively	Lori McCool made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, §15.2 and §15.3 Concerning Filing and Investigation Fees and Expedited Filings, Respectively. Stacy London seconded and the motion passed.	32:47 start of discussion 34:16 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of 7 TAC §21.43, Concerning Representative Trust Offices of Federally Chartered or Federally Insured Out-Of-State Banks and §21.44, Concerning Representative Trust Offices of Out-Of-State Trust Companies and Uninsured State Banks	Jonathan Newton made a motion to approve the Proposal and Publication for Comment of 7 TAC §21.43 Concerning Representative Trust Offices of Federally Chartered or Federally Insured Out-Of-State Banks and §21.44, Concerning Representative Trust Offices of Out of State Trust Companies and Uninsured State Banks.	35:00 start of discussion 41:24 vote
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of the Repeal of 7 TAC, §19.1 and §19.21 Concerning Grandfathered Loans and Grandfathered Investments, Respectively	Hector Cerna made a motion to approve the Proposal and Publication for Comment of the Repeal of 7 TAC, §19.1 and §19.21 Concerning Grandfathered Loans and Grandfathered Investments, Respectively. Stacy London seconded and the motion passed.	42:07 start of discussion 43:09 vote
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §21.24, Concerning Exemptions for Family Trust Companies	Will Lucas made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §21.24, Concerning Exemptions for Family Trust Companies. Susan Burton seconded and the motion passed.	43:45 start of discussion 49:23 vote
10. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required	n/a
C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items	No Action Required.	50:53 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; and d) Other Items	No Action Required.	52:14 start of discussion
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity	No Action Required	1:03:23 start of discussion
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73 Concerning Savings and Loan Associations, Resulting from Rule Review	Jay Shands made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73 Concerning Savings and Loan Associations, Resulting from Rule Review. Lori McCool seconded and the motion passed.	1:06:21 start of discussion 1:10:02 vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapters 75-77 Concerning Savings Banks, Resulting from Rule Review	Will Lucas made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC, Chapters 75-77 Concerning Savings Banks, Resulting from Rule Review. Stacy London seconded and the motion passed.	1:10:42 start of discussion 1:12:34 vote
D. OFFICE OF CONSUMER CREDIT COMMISSIONER		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:13:01 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Discussion of and Possible Vote to Take Action on the Adoption of New §83.3003 Repeal and Replace; the Adoption of Amendments to §§ 83.3004, 83.5001 83.6003, 83.6006, 83.6007, and 83.6008; and on the Adoption of the Repeal of §83.3003 (repeal and replace); in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review	Stacy London made a motion to approve the Adoption of New §83.3003 Repeal and Replace; the Adoption of Amendments to §§ 83.3004, 83.5001 83.6003, 83.6006, 83.6007, and 83.6008; and on the Adoption of the Repeal of §83.3003 (repeal and replace); in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review. Lori McCool seconded and the motion passed.	1:33:25 start of discussion 1:35:55 vote
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review	On Consent Agenda – Item D3 This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales	On Consent Agenda – Item D4 This item approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments, New Rules, and Repeals to 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review	Jonathan Newton made a motion to approve the Proposal and Publication for Comment on Amendments, New Rules, and Repeals to 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review. Susan Burton seconded and the motion passed.	1:37:09 start of discussion 1:49:05 vote
6. Discussion of and Possible Action Regarding Anticipated and Pending Litigation	No Discussion - No Action Required.	n/a

Chairman Bill White called for an Executive Session at 11:09 a.m. (1:49:08 on the audio file). The open meeting resumed at 12:01 p.m. (1:49:38 on the audio file).

There being no further business, Chairman Bill White adjourned the meeting of the Finance Commission at 12:01 p.m. (1:49:55 on audio file)

William J. White, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Anne Benites, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

April 15, 2016

A. Finance Commission Matters

2. Review and Approval of the Minutes of the February 19, 2016, Finance Commission Meeting

B. Office of Consumer Credit Commissioner

3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation
4. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 82, Concerning Administration

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §15.42 Concerning Establishment and Closing of a Branch Office
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §15.2 and §15.3 Concerning Filing and Investigation Fees and Expedited Filings, Respectively
4. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, §19.1 and §19.21 Concerning Trust Company Grandfathered Loans and Grandfathered Investments, Respectively
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies
6. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §21.43 Concerning Representative Trust Offices of Federally Chartered or Federally Insured Out-Of-State Banks and §21.44 Concerning Representative Trust Offices of Out-Of-State Trust Companies and Uninsured Banks

D. Department of Savings and Mortgage Lending

7. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 79, Concerning Residential Mortgage Loan Servicers

8. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 80, Concerning Texas Residential Mortgage Loan Companies
9. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators

Finance Commission Agencies Tentative Strategic Planning Timeline

Date	Action
December 2015	Begin Strategic Planning process internally with staff
January – March 2016	Workforce Analysis Goals and Performance Measures
January – March 2016	Customer Service Survey Survey of Employee Engagement
January – March 2016	Technology Resource Planning
January – February 2016	Stakeholder meetings
March 2016	Drafting
Early April 2016	Provide draft to Strategic Planning Committee and receive feedback
Early May 2016	Make edits and revisions as necessary
Early June 2016	Submit strategic plan draft for Finance Commission materials
June 9, 2016	Strategic Planning Committee final review of agencies strategic plans
June 2016	Strategic plans are submitted to Finance Commission for approval at their meeting
June 24, 2016	Submission of final plan to state leadership

Future Meetings Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC, Chapter 83, Subchapter A	Rules for Regulated Lenders <i>Amendments</i>	June 2016	OCCC
7 TAC, Chapter 87	Tax Refund Anticipation Loans <i>Rule Review</i>	June 2016	OCCC
7 TAC, Chapter 24	Timeline for Processing Appeals for Cemetery Brokers	June 2016	DOB
7 TAC, §25.11	Electronic Contracting <i>Rule Review</i>	June 2016	DOB
7 TAC, Chapters 151, 152, and 153	Home Equity Lending Procedures; Repair, Renovation, and New Construction on Homestead Property; Home Equity Lending <i>Rule Review</i>	June 2016	Joint Fin. Regulatory Agencies
7 TAC, Chapter 83, Subchapter B	Rules for Credit Access Businesses <i>Amendments</i>	August 2016	OCCC
7 TAC, Chapter 85, Subchapter A	Rules for Operation of Pawnshops <i>Amendments</i>	August 2016	OCCC

Office of Consumer Credit Commissioner

Agency Priorities

FY 2016

1. LEGISLATIVE

1.1. Mandated Studies.

1.1.1. Objective: Legislative Interim Studies. The agency expects to participate in interim studies and provide resource information and research. Generally interim studies in each house encompass some area within the agency's jurisdiction or area of knowledge. During the legislative session, the chairs of the respective oversight committees indicated an interest in continuing to study property tax lending and credit access businesses during the interim.

Measure: Response to requested resource information. Regular communication with the Finance Commission regarding interim legislative activity.

Status: *The agency provided testimony regarding agency updates, policy issues and litigation at the March 29 House Investments and Financial Services (IFS) Committee Hearing. Staff will also be attending the April 12 IFS Hearing in Irving.*

The IFS committee has additionally been charged to examine the short term lending industry in Texas.

- *To study the adequacy of consumer access to credit and the effectiveness of consumer protections, specifically reviewing the consistency and coordination of state law with federal law and local ordinances.*
- *Review data-reporting requirements for credit-access businesses and make appropriate recommendations.*

To date, a hearing has not been set to hear testimony on this charge, but staff expects to provide resource information in response at the appropriate time.

2. REGULATORY ACTIVITIES

2.1. Regulated Entities.

2.1.1. Objective: Supervise and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Initiate appropriate regulatory enforcement to ensure compliance with federal and state guidelines to protect the rights of consumers.

Measure: Reporting on compliance by regulated industry segment and enforcement actions.

Status:

Pawn:

The pawn industry had a 99.54% acceptable level of compliance at midyear. Enforcement actions are taken against pawnshops and individual pawnshop employees. As of February 29, 2016, the agency closed 36 enforcement actions against pawnshops and seven enforcement actions against pawnshop employees. Of these, one was an injunction, two were license revocations or suspensions, five were application denials, and 35 were administrative penalty actions.

Regulated Loans:

Acceptable level of compliance for regulated lenders was 97.27 % as of February 29, 2016. The agency closed one enforcement action on a license revocation or suspension.

Property Tax Loans:

The acceptable level of compliance was 33.33% for property tax lenders at midyear. This is the smallest licensee category by volume that the agency regulates. At the beginning of the fiscal year, some master licensee group examinations were conducted that resulted in an unacceptable level of compliance. The percentage of acceptable compliance examinations is projected to improve. The agency closed three administrative penalty actions against property tax lenders as of February 29, 2016.

CAB:

Credit access businesses had a 30.09% acceptable level of compliance in the first half of the fiscal year. The agency continues to conduct centralized CAB examinations to the extent possible. Several centralized examinations completed during the first quarter of the fiscal year had ratings outside of the acceptable level of compliance and thus had an impact on the mid-year compliance percentage. By the end of March, the acceptable level of compliance is improving, and it is anticipated the acceptable level of compliance will continue to increase through the remainder of the fiscal year. The agency closed 64 enforcement actions against credit access businesses in the first six months of the fiscal year. Of these, one was a license revocation or suspension and the remaining 63 were administrative penalty actions.

Other enforcement actions:

The agency did not close any enforcement actions against registered creditors, debt management/debt settlement businesses, crafted precious metal dealers, or residential mortgage loan originators. The agency closed two injunctive actions related to credit card surcharge violations as of February 29, 2016.

- 2.1.2. Objective: MVSF.** Achieve acceptable level of compliance of 80% through examinations and industry education efforts. Complete 1,650 MVSF examinations. Monitor follow-up and restitution orders for licensees with outstanding examination issues.

Measure: Number of motor vehicle exams completed. Report the rate of satisfactory compliance. Report the amount of restitution returned to consumers as a result of MVSF examinations.

Status: *The motor vehicle sales finance industry midyear acceptable level of compliance was 77.47%. Examinations continue to be completed at increased rates, with 1,052 completed at the end of the 2nd quarter, which is 127.5 % of the prorated goal for mid-year. The acceptable level of compliance has continued to increase steadily from the first quarter of FY16. The agency closed 71 enforcement actions against motor vehicle sales finance licenses in the first half of FY16. Of those, two were application denials, seven were license revocations or suspensions, eight were injunctions, and 54 were administrative penalty actions.*

Thus far in FY '16, \$4,837,739 in restitution has been returned to consumers as a result of MVSF examinations.

2.1.3. Objective: MVSF Examination Procedure Review. The motor vehicle sales finance examination procedures will be amended to enhance the scope and quality aspects of the examination. The enhancements will improve the efficiency of the examination teams, and streamline the process by identifying key issues to be included during the scope of the examination. The Examiner Manual will be updated to provide the necessary requirements to achieve the enhancements.

Measure: Completed review and update of Examiner Manual on amended examination procedures.

Status: *The review and amendment of the Examiner Manual is still in process, and is expected to be completed by the end of the fiscal year.*

2.2. Licensing.

2.2.1. Objective: Process 95% of license applications within 90 days from received date to completion date. Ensure that all newly submitted and processed paper applications are optically imaged. Provide guidance and technical support to encourage 80% of all licensees to create an account on the online system by the end of the fiscal year. Ensure 100% of licensing personnel receive training in professional development or customer service.

Measure: Report on license activities, benchmarks, application processing status, online adoption rate and employee training.

Status: *Currently approximately 83% of all applications are submitted online, which creates efficiencies in the licensing process and later during renewals. Additionally, 84% of all approved new applications for business licenses in FY16 have been processed within 90 days of receipt. This percentage is likely to increase throughout the rest of FY16. Through the use of ALECS, new business applications primarily are entered online*

in data fields supported by uploads of digital documents which ensures that all necessary information is captured and retained in a digital format. The department as a whole is exploring team building ventures, while development and training opportunities are consistently researched.

3. POLICY AND RULE DEVELOPMENT

3.1. Agency Rules.

3.1.1. Objective: Rule Review. Complete rule reviews of 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses (originally adopted 2011) ; 7 TAC Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (originally adopted 2011); 7 TAC Chapter 87, Tax Refund Anticipation Loans (reviewed 2012); and 7 TAC Chapter 89, Property Tax Lenders (reviewed 2012).

Measure: Adoption of rules according to schedule and proposal of modifications to existing rules.

Status: *The commission adopted the completed rule review of 7 TAC Chapter 83, Subchapter B, Rules for Credit Access Businesses (CAB) in October, with the publication of associated amendments being approved in two phases: set one in October 2015 and set two in December 2015. Both sets of CAB amendments were approved by the commission and became effective on January 7 and March 10, 2016, respectively. The commission adopted the completed rule review of 7 TAC Chapter 85, Subchapter B, Rules for Crafted Precious Metal Dealers (CPMD) in December 2015, with the publication of associated amendments being approved at that time. The CPMD amendments were approved by the commission in February 2016 and became effective on March 10, 2016.*

The rule review for Chapter 87, Tax Refund Anticipation Loans is currently scheduled for June 2016. The rule review for Chapter 89, Property Tax Lenders has been reassigned to FY 2017. However, the rule reviews for 7 TAC Chapter 84, Motor Vehicle Installment Sales (February 2016); 7 TAC, Part 1, Chapter 1, Consumer Credit Regulation (April 2016); and 7 TAC Chapter 82, Administration (April 2016) have been reassigned to FY 2016 and are currently in process.

Although not mentioned in the Objective, the agency also completed the rule review of 7 TAC Chapter 90, Plain Language Contract Provisions, during this time period. The commission adopted the completed rule review of Chapter 90 in October 2015, with the adoption of associated amendments being approved at that time. The Chapter 90 amendments became effective on November 5, 2015. The Chapter 90 rule review was an extensive project, involving the detailed revision of numerous plain language contract forms used by creditors, as reflected in over 60 figures provided in the rules.

3.1.2. Objective: Rule Development. Work with interested stakeholders regarding development of updated disclosures for credit access businesses and other associated issues. Work with interested stakeholders from all stakeholder groups to develop more streamlined licensing and registration procedures. Draft rule amendments as appropriate.

Measure: Reporting on stakeholder engagement and rule development. Adoption of rules according to schedule.

Status: *As part of the credit access business (CAB) rule review completed in October 2015, the agency held a stakeholders meeting on November 18, 2015, and collected precomments from CAB stakeholders to develop updated disclosures, and to clarify reporting requirements and license transfers. The updated disclosures and other amendments were approved by the commission in February 2016 and became effective on March 10, 2016. As requested by stakeholders, CABs may continue using the previous disclosures through August 31, 2016, to exhaust existing supplies and implement the revised disclosures. Additionally, the agency held a stakeholders meeting on February 3, 2016, and collected precomments from motor vehicle sales finance stakeholders to streamline licensing processes, develop an annual renewal statement, and clarify issues related to documentary fees and debt cancellation agreements.*

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

4.1.1. Objective: Manage grant solicitation, application review, selection, reporting and funding for the FY 2016-2017 grant cycle.

Measure: Reporting on fund activities, investment earnings, grant request submissions, grants awarded and grantee reporting highlights. Also, identify and implement ways in which to improve grant program based on report findings and program needs.

Status: *With the recommendations from the Grant Advisory Committee, the Finance Commission selected eight recipients for the 2016-2017 grant cycle. In addition, the agency will carefully monitor the grantee reports once they are submitted and continue to identify ways to improve the grant program.*

4.2 Financial Literacy

4.2.1. Objective: Identify underserved populations in need of financial literacy and provide financial literacy education to new demographics of consumers by collaborating with local agencies.

Measure: Report on number of people and programs reached.

Status: *At the mid-year point, the agency had begun to reach out to new groups of consumers. However, the financial education specialist position is currently vacant and therefore once it is filled, the agency is confident it will meet this goal by the end of the fiscal year.*

4.2.2 Objective: Synthesize data from TFEE grant reports to further encourage and support improved financial education and asset building.

Measure: Delivery of final report of first TFEE grant cycle (2014-2015) and reporting on efforts to use TFEE data to support and improve financial education.

Status: *A report has been compiled for the first completed grant cycle. (2014-2015)*

4.3. Industry

4.3.1. Objective: Continue to build relationships with industry stakeholders and ensure clear communications on education or regulatory compliance. Monitor emerging issues in agency's areas of regulation and communicate the impact to regulated and licensed entities. Develop publications that address topics of interest and share with regulated and licensed entities. Participate in or attend industry meetings or seminars.

Measure: Report to the Finance Commission on the frequency of communications.

Status: *At the mid-year, the agency continues to build relationships and to monitor emerging issues in the areas of regulation. Once the Information Specialist position is filled, the agency is confident it will meet this goal and develop publications of interest to the industry.*

4.3.2. Objective: Conduct initial planning and design on customer feedback module.

Measure: Report on progress and necessary tools needed to develop module.

Status: *This goal is still in process.*

5. AGENCY MANAGEMENT

5.1. Performance Measures.

5.1.1. Objective: Performance Targets. Meet or exceed 80% of key performance targets within $\pm 5\%$ of the projected target.

Measure: Continue to meet or exceed the strategic planning goals for key performance measures, including attainment of at least 7 out of 9 key performance targets. Report results to Finance Commission on a quarterly basis.

Status: *The agency is currently on track to meet or exceed 8 of 9 key performance targets. Achievement of one target has been impacted by staff departure.*

5.2. Human Resources.

5.2.1. Objective: Recruit and retain qualified personnel with the appropriate skill set necessary to meet short and long term needs. Continue efforts to right size staffing, based on performance requirements, with an emphasis on employee retention and diversity. Ensure staff receives adequate cross-training to minimize institutional knowledge loss due to work separation or retirement. Maintain competitive compensation schedules.

Measure: Thoroughly review exit interviews to identify improvements to support retention. Report on turnover ratio and cross-training initiatives.

Status: *With the departure of the HR Specialist in early March, the agency will now draw upon the experience of the incoming HR Specialist, who worked at a large state agency, to improve this process.*

5.2.2. Objective: Promote opportunities for staff professional development. Ensure that examiners and investigators receive a minimum of 40 hours of continuing education. Ensure that at least 40% of administrative staff receive additional professional or job-related training.

Measure: Reporting on training opportunities and attainment of minimum exam staff training and administrative staff training.

Status: *This goal is still in process. A number of staff members from different departments have received training as part of their professional development.*

5.2.3. Objective: Conduct review of Human Resources policies and update as appropriate. Develop and implement a supervisor manual.

Measure: Report on completion of review and progress on supervisor manual.

Status: *The first draft of this manual has been completed and will be reviewed in the coming weeks for implementation.*

5.2.4. Objective: Develop and conduct comprehensive strategic process to include stakeholders.

Measure: Report on progress to the Finance Commission.

Status: *The agency invited interested stakeholders of all regulated areas to participate in a work session in preparation for the upcoming Strategic Plan 2017-2021. The meeting was held on March 9, 2016 and was an all-inclusive session for stakeholders to provide input and feedback relative to specific industries, interests, and business operations.*

5.3. Financial and Self-Directed, Semi-Independent Status.

5.3.1. Objective: Ensure that the agency's revenues and expenditures are appropriate and balanced and maintain a cash reserve or fund balance in compliance with Finance Commission policies. Provide greater data reliability, more efficient transactional processing, and enhanced reporting. Integrate accounting system with new agency enterprise system (ALECS).

Measure: Review internal financial statements and variances on a monthly basis. Submit quarterly financial data relating to the agency's financial position and fund balance for review by the Finance Commission.

Status: *The agency monitors and timely reviews the financial status through monthly Operating Statements and Budget Analysis reports. These reports are also reviewed on a quarterly basis by the Finance Commission. Financial performance in the year was within the budgeted levels as established by the Finance Commission. The agency continues to fine tune its use of the internal accounting system to improve transparency and improve the granularity of data for reporting and decision making.*

5.4. Information Technology.

5.4.1. Objective: Legacy Modernization. Commence work on the Compliance IT project for ALECS, the OCCC's data management and regulatory information system. Improve business operations. Engage in conceptual design for the project which will modernize data management for the examination function. Complete contract negotiation and Statement of Work specifications with a qualified vendor. Begin data requirement gathering and development.

Measure: Reporting on project development and milestones.

Status: *Work is well underway on this project, with milestones reported regularly to the Finance Commission. The first round of requirements gathering is now complete and staff is currently finalizing requirements with the vendor.*

5.4.2 Objective: Increase Agency Security Posture. Evaluate and test additional network security hardware/software to protect agency data assets. Locate or develop staff security training programs to enhance user awareness of their role in network/computer security.

Measure: Evaluation and testing of 2 hardware/software products with possible implementation; promote security awareness and initiate training program for at least 50% of staff.

Status: *A security hardware/software product has been chosen. The agency will be upgrading the Cisco ASA security hardware the first week in April, and configuring the*

security software, Sourcefire, the second week in April. Further activities will occur in the second half of the year.

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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MEMORANDUM

TO: The Finance Commission

FROM: Charles G. Cooper, Commissioner

DATE: April 1, 2016

RE: Department of Banking Priorities for Fiscal Year 2016 – With Mid-Year Accomplishments

I. LEGISLATIVE – *State and National Legislative Issues*

I.1 Objective: Respond positively and actively, providing appropriate and comprehensive resource material as requested.

Measure: To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Prepare interim charge reports if requested.

Status: *Have provided Finance Commission members Legislative committee information and resource data for interim charge hearings.*

I.2 Objective: Maintain accurate, timely, and complete communication with Finance Commission members about significant legislative issues and events (testimony and interim committee meetings) as well as conditions, trends and significant events in the industries the agency supervises.

Measure: Timely notify Finance Commission members of interim hearings and other items of interest when known. Keep members informed of significant federal laws and policy statements and how supervised entities are affected. Provide sufficient information and materials to give Commission members an overall assessment of our regulated industries.

Status: *Notices of hearings and updates on the regulated industries and applicable federal laws has been provided to members at their regular meetings.*

II. REGULATORY ACTIVITIES – *Examination Activity and Enforcement Actions*

II.1 Objective: Meet key performance measures.

Measure: Continue to meet or exceed the strategic planning goals for key performance measures. Quarterly, report results to the Finance Commission. Ensure that every problem institution has an effective administrative or enforcement action to address adverse examination findings.

Status: *Through February 29, 2016 all key performance measures have been met.*

II.2 Objective: Remain active and involved at the national level in supervisory issues affecting banking, money services business activities, trust services and other areas of direct supervisory oversight in Texas.

Measure: Maintain active contact with other states individually and through regulatory associations (CSBS and MTRA), trade associations (IBAT and TBA) and frequent contact with federal regulators so as to be aware of events, decisions, other state and federal policies and other areas of actual or potential impact on the Department's regulatory functions or the industry. Take proactive steps to respond as issues arise affecting the industries or our supervisory duties.

Status:

- *Commissioner Cooper serves as Chair Elect of CSBS and multiple staff members serve on CSBS committees.*
- *Agency is an active member of the MTRA and the MMET.*
- *Deputy Newberg completed her presidency term with MTRA in October 2015.*
- *Deputy Newberg interviewed by the Financial Analysis Task Force regarding state MSB licensing.*
- *Director Purdom serves as the Chairman of the CSBS Performance Standards Committee until May 2016 when his term expires.*
- *Deputy Commissioner Bacon co-chairs the Financial Services Sector Specific Agency task force under the Texas Office of Homeland Security.*

II.3 Objective: Maintain an ongoing awareness of our bank and trust entities' risk profiles and the condition of the economies in which they operate. Continue ongoing monitoring of individual or systemic conditions, including cybersecurity threats and high risk activities, which present risks to their financial stability. Monitor and take necessary actions against institutions exhibiting unacceptable risk profiles.

Measure: Perform research, maintain ongoing dialogue with other regulators, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leading role in the effort to combat cyber-security threats. Maintain an off-site monitoring program of bank and trust industries while initiating appropriate regulatory responses and actions when applicable. Research and take

required actions against institutions with unacceptable risk profiles to minimize the adverse impact on depositors, shareholders and the banking system in general.

Status:

Oil and Gas Risk Analysis: Efforts continue to assess the risks associated with bank business lines directly and indirectly dependent upon oil and gas production. Information is collected quarterly from banks that are known to be actively involved in oil and gas lending or are located in areas that are heavily dependent on oil production. Staff continues to work closely with our FDIC and Federal Reserve Bank counterparts to perform follow-up reviews at banks with potentially higher risk profiles.

Cyber-Security Threats: We continue to place a high importance on cyber threats and are a leading agency in identifying and addressing measures the industry needs to take. Staff continues to work with the banking industry to enhance the policies, procedures and practices that institutions can use to counter the ever growing array of cyber threats. The Director of IT Security Examinations is one of six members of the Cybersecurity and Critical Infrastructure Work Group (CCIWG), which was created by the FFIEC. The CCIWG is working at the national level to address cyber threats to the banking system, which Texas banks will benefit from. Department staff also participated in the development of the Cybersecurity Assessment Tool (CAT), which was release by the FFIEC on June 30, 2015. This tool is designed to assist bank managers in evaluating their inherent risks to cyber threats and measuring their preparedness to handle such events. Though the use of this tool by bank managers is optional, Commissioner Cooper issued Industry Notice 2015-8 on September 15, 2015 alerting the industry about its usefulness and stating that measuring and preparing for cyber risks is not optional. The Department's IT Specialists started reviewing completed cybersecurity assessments at all IT exams beginning January 2016.

II.4 Objective: Monitor emerging issues in our areas of regulation and determine and communicate the impact to the regulated entities.

Measure: Report on emerging issues to the Finance Commission and regulated entities. Provide publications that address topics of interest. Participate in industry meetings and seminars. Continue to be involved in speaking opportunities with these regulated industries to provide updates related to ongoing regulatory issues.

Status:

- *MSB staff continues to participate in the MTRA Emerging Issues and Licensing Committees.*
- *Notified MSB industry of Departmental guidance concerning third-party compliance officers and sharing reports with financial institutions.*
- *Emerging issues discussions held at each Finance Commission meeting.*

II.5 Objective: Monitor areas/industries we regulate for illegal activity.

Measure: Monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable rules and regulation to protect the rights and interests of consumers.

Status:

- *Issued three orders prohibiting former bank officers from engaging in any future banking activity.*
- *Issued seven orders against five money service business.*
- *Issued one order against a prepaid funeral contract seller.*
- *Issued one order against a private child support enforcement agency.*
- *Notified 17 MSB entities that may be engaged in money transmission without a license, and as a result:*
 - *One company responded as not doing business in Texas, certification letter is pending.*
 - *Two companies have not responded, and a second letter is being resent to a different address for a response.*
 - *Three companies are pending a response with a due date of April 2016.*
 - *One company closed its business.*
 - *Ten companies responded and provided documentation that is currently being reviewed by the Legal Division.*
- *Notified 4 PFC entities that may be engaged in prepaid funeral contract activity without a license, and as a result:*
 - *Three companies paid restitution.*
 - *One company's restitution was funded by NOLHGA (the insurance guaranty fund).*

II.6 Objective: Continue to process consumer complaints/inquiries professionally, appropriately and timely.

Measure: Periodically report to the Finance Commission on the complaints/inquiries received and processed.

Status:

- *Consumer assistance activity is reported at each Finance Commission meeting.*
- *Complaints are processed timely and accurately.*

II.7 Objective: Continue to develop and refine examination procedures and reference materials to enhance the examination process.

Measure: Monitor regulatory changes and update examination materials in a timely manner. Perform internal reviews of work procedures to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners.

Status:

- *The Department's Law and Guidance Manual for the web, which contains statutes, rules, regulatory guidances, supervisory memorandums, and legal opinions, is updated every calendar quarter. A desktop version of the Law and Guidance Manual is updated at the same time and allows all examiners access to the same information as the web version, without requiring an internet connection. Updates were completed as of September 30, 2015 and December 31, 2015.*
- *Reviewed and revised eight commercial examination procedures: Audit; Borrowed Funds; Collections; Deposits; Loans & Leases; Overdrafts; Retail Sale of Nondeposit Products; and Other Supervisory Issues.*
- *Reviewed and revised four trust examination procedures: Compliance, Trust Company Capital; Trust Company Asset Quality; and Exempt Trust Company.*
- *Updated examination reference materials for commercial, trust, and IT procedures.*
- *Issued Administrative Memorandum 2006 to Bank & Trust Examination staff regarding changes to the Report of Examination and the communication of supervisory concerns to the board of directors.*
- *Issued Examiner Bulletins: XB 2015-02 CML; XB 2015-03 IT; and XB 2015-034 TR regarding Guidelines for Procedures and Work Paper Documentation for commercial, IT, and trust examiners, respectively.*
- *The Supervisory Update News Summary is prepared each month and provided to staff and posted on the external website in a timely manner.*
- *Revisions were made to the MSB MT examination procedures, which included the addition of two procedures related to new affiliation notice requirements, and one procedure regarding bi-weekly examination notice.*
- *Revisions were made to the MSB CEX examination procedures, which included the addition of one procedure related to mail-order customer identification verification, and one procedure concerning mail-order current shipping.*
- *Minor clarifications were made to the MSB Examination Request List.*
- *Revisions to the PCC examination procedures were made to 26 procedures for clarification purposes and were non-substantive.*
- *Revisions to the trust-funded and insurance-funded PFC examination procedures were made to 19 procedures for clarification purposes and were non-substantive.*
- *All updates to Special Audits examination procedures are provided to staff upon completion.*

III. POLICY AND RULE DEVELOPMENT – *Internal and External Policies, Activities, and Rules*

III.1 Objective: Issue formal communications to regulated entities to clarify and/or promote best practices to assist in complying with laws and policy statements.

Measure: Issue Supervisory Memorandums, Regulatory Guidances and Legal Opinions in a timely manner as needed.

Status:

- *Revised Supervisory Memorandums (SM):*
 - *SM 1003 – Examination Frequency for State-Chartered Banks (December).*
 - *SM 1004 – Examination Frequency for Trust Companies (September).*
 - *SM 1033 – Level II Full Scope Examinations for Trust Companies (September).*
- *New Supervisory Memorandums (SM):*
 - *SM 1013 – Sharing Examination Reports with a Bank (February).*
 - *SM 1015 – Outsourcing of Compliance Functions (February).*
 - *SM 1040 – Recommended File Documentation for Money Services Business License Holders that Conduct Business through Authorized Delegates, Foreign Agents and Counterparties, and Gateway Agents (October).*
 - *SM 1041 – Examination Policy for Domestic Money Services Businesses that Conduct Business from a Non-Traditional Office Location (November).*

III.2 Objective: Monitor and modify Texas Administrative Code rules as necessary to reflect changes in state and federal laws, clarify existing laws, and address the dynamics of the changing industries. Perform periodic reviews of fee rules to ensure each regulated area covers its cost of regulation.

Measure: Amend rules and adopt new rules as necessary to timely effect necessary changes. Conduct rule reviews to evaluate their necessity and applicability in a continuing manner such that all rules are reviewed every four years.

Status:

- *Rule amendments and new rules were adopted to:*
 - *Establish procedures for banking development districts, as required by HB 1626.*
 - *Clarify regulatory requirements for payment processors under the Texas Money Services Act.*
 - *Set assessments and specialty examination fees for banks.*
 - *Make confidential the statement of condition and income (call report) of an exempt trust company, and require that such call reports be filed simultaneously with annual certification of exempt status.*

- *Amend exemptions for family trust companies pursuant to SB 875.*
- *Provide internal deadlines for the commissioner and department and for MSB license holders seeking change of control approval.*
- *Provide training and education assistance to employees of the finance agencies.*

III.3 **Objective:** Maintain active participation in financial literacy efforts.

Measure: Enhance outreach efforts by providing train-the-trainer financial literacy workshops to the banking industry and the public, in addition to webinars. Continue active participation in financial literacy groups and events.

Status: *The Department hosted two financial education Train-the-Trainer sessions. The two workshops were held in October in Houston and in November in San Antonio. The goal was to provide hands on training to financial institutions, teachers, government agencies, non-profit organizations and community leaders who are interested in delivering financial education to their communities. Fifty-eight participants registered to attend the two events.*

A free webinar was hosted on December 10, 2015. The featured topic was Bankers and the Volunteer Income Tax Assistance (VITA) Program. Mr. Johnnie Bowers with the Internal Revenue Service was the guest speaker. The webinar drew 92 participants.

IV. **AGENCY MANAGEMENT – Staffing, Recruiting, Fiscal Responsibility, and Technology**

IV.1 **Objective:** Remain active in recruiting qualified personnel while strengthening the diversity of the workforce whenever possible. Maintain compliance with all state and federal employment laws.

Measure: Actively recruit entry level positions at state universities and colleges by attending no less than six job fair events. Promptly post vacancies. Update personnel policy and procedures to comply with changes due to legislation and judicial decisions.

Status:

- *Nine jobs were posted from September 1, 2015 through February 29, 2016.*
- *One Central Point of Contact (CPC) position filled via internal posting.*
- *Three Trust Examiner and one Foreign Bank Examiner positions filled.*
- *Five Bank and Trust Financial Examiner I positions filled.*
- *Three Special Audits Financial Examiner positions filled, two in PFC/PCC and one MSB.*
- *Agency staff participated in 15 recruiting fairs and numerous student outreach events.*
- *The agency revised five personnel manual sections and two administrative memorandums.*

- IV.2 Objective: Continue efforts to attain full staffing, with an emphasis on employee retention and staff diversity. Promote junior staff involvement in new responsibilities to better enable seamless transition into senior staff positions as vacancies occur. Continue efforts to be proactive in competitive salary administration.

Measure: Continue to improve examination staff retention by promoting career opportunities and addressing major issues that contribute to non-retirement resignations, with a goal to have non-retirement turnover not exceed 8% for fiscal year 2016. Given the significant percentage of Department employees that are retirement-eligible, the agency should be proactive with succession planning development. Also, maintaining a competitive examiner salary program of at least 90% of comparable pay by the FDIC is important in achieving success.

Status:

- *Agency fiscal year 2016 turnover rate through February 29, 2016 is 4.29%; Agency turnover excluding Retirements is 3.75%.*
- *Financial Examiner turnover rate through February 29, 2016 is 4.76%; Financial Examiner turnover excluding Retirements remains at 4.76%.*
- *Through February 29, 2016, the agency has hired 15 new employees and lost eight.*

- IV.3 Objective: Have up-to-date computer hardware and software to enhance the effectiveness, speed and quality of the work products that are compatible with our federal counterparts. Provide timely technical support to staff.

Measure: Provide technology tools necessary for staff to efficiently and effectively perform their job functions. Ensure network, website, and proprietary databases such as CATS and EDISON function appropriately and safely without prolonged downtimes. Maintain technology help desk and timely train staff on any new software applications.

Status:

- *Corporate's CATS system has been enhanced with quality assurance reporting and an automated report generation and delivery module.*

- IV.4 Objective: Safeguard the integrity of data and information technology networks and systems from unauthorized access or use and ensure they are available during an emergency.

Measure: Provide cyber threat training to staff and perform an annual information security risk assessment (external every three years) and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Conduct annual test of the Department's disaster recovery plan to ensure operations will function appropriately and continue periodic intrusion testing by the Department of Information Resources.

Status:

- *The Department conducted a network Risk Assessment in January. The outcome of the risk assessment was good. The IT Department will continue to work on the few areas where improvement is needed.*
- *Replaced the Department's old and outdated network firewall. The firewall was over eight years old.*
- *Cyber security training continues. All Department employees are required to take monthly security training.*

IV.5 Objective: Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series to become commissioned. Provide advanced training for senior supervisory staff to enhance their career development.

Measure: Provide core required training courses to financial examiners in the FE I – FE III series so they can progress in the financial examiner series. Prepare examiners adequately to pass the commissioning test. Continue to develop specialist positions and provide opportunities for senior staff to select appropriate courses to aid in this development. Promote meaningful leadership and management courses to strengthen management succession opportunities.

Status:

- *Bank Secrecy Act training was held in February for all examination staff and other select staff members.*
- *An Examiners' Conference was held in Fort Worth in March. This conference provided an opportunity to provide training to all staff members.*

IV.6 Objective: Ensure agency expenditures are necessary and prudent and within budgetary constraints; revenues collected are adequate to cover expenditures; and provide a cash reserve or fund balance that complies with Finance Commission policies.

Measure: Review expenditure and revenue patterns monthly. Prepare quarterly financial statements to substantiate the agency's financial position and cash reserve.

Status:

- *Monthly financial statements are provided to all divisions for review and to the Finance Commission each quarter.*
- *For the first six months of fiscal year 2016, revenues were 99.7% of budget and expenditures were 97.1% of budget.*
- *Cash reserves are within policy guidelines.*

IV.7 Objective: Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency.

Measure: Report on improvements identified and implemented.

Status: *Divisional reviews during the first two quarters of the year required minimal tweaking to internal controls and processes of the agency.*

IV.8 Objective: Continue to explore options for physical relocation of the Finance Commission agencies that meets the needs of all three agencies.

Measure: Report on activities related to the relocation of the Finance Commission agencies.

Status: *Broker and architect selected and contracts executed. Agency heads and staff have toured multiple properties and met with interested sellers. Architect has completed "Space Needs Assessment."*

IV.9 Objective: Comply with the directives of the State Office of Risk Management and the Department of Public Safety regarding the Business Continuity Plan.

Measure: Ensure yearly update and exercise of the Plan.

Status: *An exercise related to the Plan was conducted in January 2016 with good results. The yearly Plan update and submission the State Office of Risk Management was done in March 2016.*

As Commissioner, my overriding objective continues to be for the Banking Department to be considered the top financial regulator by the industries we regulate, as well as our regulatory peers and counterparts, and the top employer by our personnel. The culmination and achievement of the aforementioned goals will help achieve this objective.



DEPARTMENT of
SAVINGS & MORTGAGE LENDING
Caroline C. Jones, Commissioner

Memorandum

To: The Finance Commission

From: Caroline C. Jones

Date: April 15, 2016

Re: Agency Priorities for Fiscal Year 2016

I. Legislative Items

I.1 Objective: Monitor federal legislation and regulations that may affect the Department or its regulated entities.

Measure: Communicate relevant information to the Finance Commission and industries, as necessary.

Status: *The Department monitors legislation and regulations at the federal level and as appropriate reports this information to the Finance Commission as well as to regulated industries. For example, the Department reported the progress of Know Before You Owe (TRID) to the Finance Commission and participated in presentations to the industry statewide prior to the effective date of the rules.*

I.2 Objective: Monitor interim charges that may affect the Department or its regulated entities.

Measure: Provide regular updates to the Finance Commission regarding interim legislative activities.

Status: *The Department has provided updates to the Finance Commission relating to interim charges and will report further should any testimony from the Department be required.*

II. Regulatory Items

II.1 Objective: Continue to closely monitor the Department's savings banks' risk profiles and the economic conditions in which they operate. Continue ongoing monitoring of both individual and systemic conditions that present risks to their financial security through the Department's off-site financial information software and onsite presence.

Measure: Maintain off-site monitoring program of savings banks while initiating appropriate regulatory responses and enforcement actions when applicable. Maintain examination schedule as set by Department policy.

Status: The Department is actively engaged in determining and taking appropriate supervisory action during on-site examinations and off-site reviews. In Finance Commission reports, the Department has reported that safety and soundness measures reflect all state savings banks are in the top two CAMELS ratings. Off-site monitoring continues to take place with communication to state savings banks as deemed necessary and appropriate.

II.2 Objective: Retain prompt resolution times on consumer complaints.

Measure: Provide updates to the Finance Commission on the aging of complaints. Regularly review any complaints open over 120 days to identify issues preventing the timely closing of complaints.

Status: As of February 29, 2016, 93% of the open consumer complaints were less than 90 days old with 82% of them being aged less than 60 days, and none being aged over 180 days.

II.3 Objective: Continue to participate in the development and implementation of home equity interpretations.

Measure: Continue participation in meetings of the Home Equity Lending Working Group, comprised of representatives from the Department, the Office of Consumer Credit Commissioner, the Department of Banking and the Credit Union Department.

Status: During the first quarter of FY16, the Home Equity Lending Working Group conferred on the implications of the home equity case, *Wood v. HSBC Bank*, pending before the Texas Supreme Court to determine if an amicus brief should be filed. Ultimately, the Working Group determined not to pursue filing a brief. In February 2016, the Home Equity Lending Working Group developed a timeline for proposed home equity interpretation revisions to be considered in 2016.

II.4 Objective: Continue to remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

Measure: Maintain active contact with other states, regulatory associations (e.g. ACSSS, CSBS, AARMR, and NACCA), trade associations, (e.g. DFWAMB, IBAT, TAR, TBA, and TMBA) and federal regulators in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.

Status: The Department has two staff members currently serving on national regulator trade association boards (Chair of ACSSS and Vice-President of AARMR). Serving on these boards provides the Department with a voice at the national level. Additionally, several staff

members serve on CSBS committees and working groups. The Department maintains regular contact with state level trade associations TBA, IBAT, TMBA, and ATMPros.

II.5 Objective: Continue to cooperate and build relationships with the CFPB on examinations, supervision, and consumer complaint resolution issues. Monitor CFPB rule writing activity and interpretations of existing statutes such as RESPA, TILA, and SAFE Act.

Measure: Report to the Finance Commission on the frequency of interaction with CFPB in all of the above listed activities as well as meetings.

Status: *The Department continues to keep open communication with the CFPB particularly in relation to upcoming multistate origination/servicing examinations and enforcement actions. The Department works in conjunction with the Multi-State Mortgage. Commissioner Jones and Director O'Shields met with CFPB Southeast Regional Director Jim Carley in Dallas November 17, 2015.*

II.6 Objective: Continue compliance examinations of mortgage companies and Residential Mortgage Loan Originators, licensed under Finance Code, Chapters 156 and 157, respectively; to ensure that licensees are in compliance with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

Measure: Maintain examination schedule, as set by Department policy, and as needed initiate appropriate regulatory responses and enforcement actions for violations found.

Status: *The Department issued formal and informal enforcement actions as appropriate and had post-examination communication as deemed necessary. In the first half of FY2016, the Department conducted 232 examinations covering 2,695 licensees.*

III. Policy and Rule Development

III.1 Objective: Conduct rule review of all rules related to the savings and loan and state savings banks regulations and mortgage lending. Propose necessary amendments to the rules as necessary.

Measure: Have final action taken, either re-adoption or repeal, on the rule reviews and proposal of any amendments needed to these rules.

Status: *Through the first half of FY2016, the Department had some clarifying amendments to its mortgage rules, Chapters 80 and 81, adopted by the Finance Commission and began the rule review process for both the thrift and mortgage related rules. The rule reviews for the thrift area was proposed to the Finance Commission at the December 2015 meeting and were readopted at the February 2016 meeting. The mortgage rule review will be proposed later in the year.*

IV. Industry Outreach and Communication

IV.1 Objective: Provide pertinent information to regulated industries through a variety of means both electronic and face to face as deemed appropriate and efficient.

Measure: Provide regular updates to the Finance Commission regarding activities conducted in these areas.

Status: During the first half of FY16, the Department participated in five speaking engagements providing information related to frequently cited exam violation, regulatory hot topics, and Department updates. In addition to those speaking engagements, the Department held its third Mortgage Industry Seminar in November 2015.

V. Agency Management

V.1 Objective: Recruit and train personnel with the appropriate skill set necessary to meet the Department's short and long term needs. Train and cross-train employees as needed to minimize knowledge loss due to employees' retirement or separation and to prepare for workload shifts due to changes in regulated industries and/or technology. Provide and promote opportunities for staff professional development.

Measure: Report on staffing activity, actions to retain staff, and turnover ratios to the Finance Commission.

Status: During the first half of FY2016, there were four separations, three of which were voluntary. The Department is taking steps to fill those positions.

Significant efforts are made to provide training and cross-training for job skills and personal development and enrichment. The Department's structure and business needs are monitored on an ongoing basis in an effort to anticipate needed skills and qualifications and to be prepared for succession planning upon retirements.

V.2 Objective: Meet or exceed 90% of the key performance measures, within the Department's control – four out of nine. Strive to reduce deficiency, if any, in the five performance measures outside the Department's control.

Measure: Provide regular updates to the Finance Commission regarding performance measures.

Status: The Department has four key output performance measures, two of which are within the Department's control. The performance is measured and reported quarterly to the Finance Commission. As of the second quarter of FY16, the Department has met or exceeded three of the four output measures. The Department expects to meet all the output measures by the end of the fiscal year.

V.3 Objective: Implement improvements in business processes and internal controls in response to evolving business needs, audit recommendations, and/or internal reviews.

Measure: Report on implementation progress and outcome of audits to Finance Commission Audit Committee.

Status: The Department has not undergone any audits as of the second quarter of FY16.

V.4 Objective: Monitor the Department's budget and reserve balances as approved by the Finance Commission to maximize the responsiveness and flexibility allowed by the Self-Directed Semi-Independent status.

Measure: Report to the Finance Commission Audit Committee at least quarterly on both revenue and expenditure variances to the budget.

Status: Reports have been submitted quarterly to the Finance Commission as required, with detailed explanations of variance and cash reserves. Internally, the budget is monitored and analyzed on an ongoing basis.

V.5 Objective: Ensure hardware and software are kept current to maintain effectiveness, and quality of work product of the Department.

Measure: Report to the Finance Commission enhancement/improvement activities in this area.

Status: The Department strives to keep its hardware and software up-to-date. We are in the process of updating two servers and replacing all thrift examiners' laptops. Additionally, on a monthly or as needed basis computers are updated for software patches.

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B.

**Office of Consumer
Credit Commissioner**

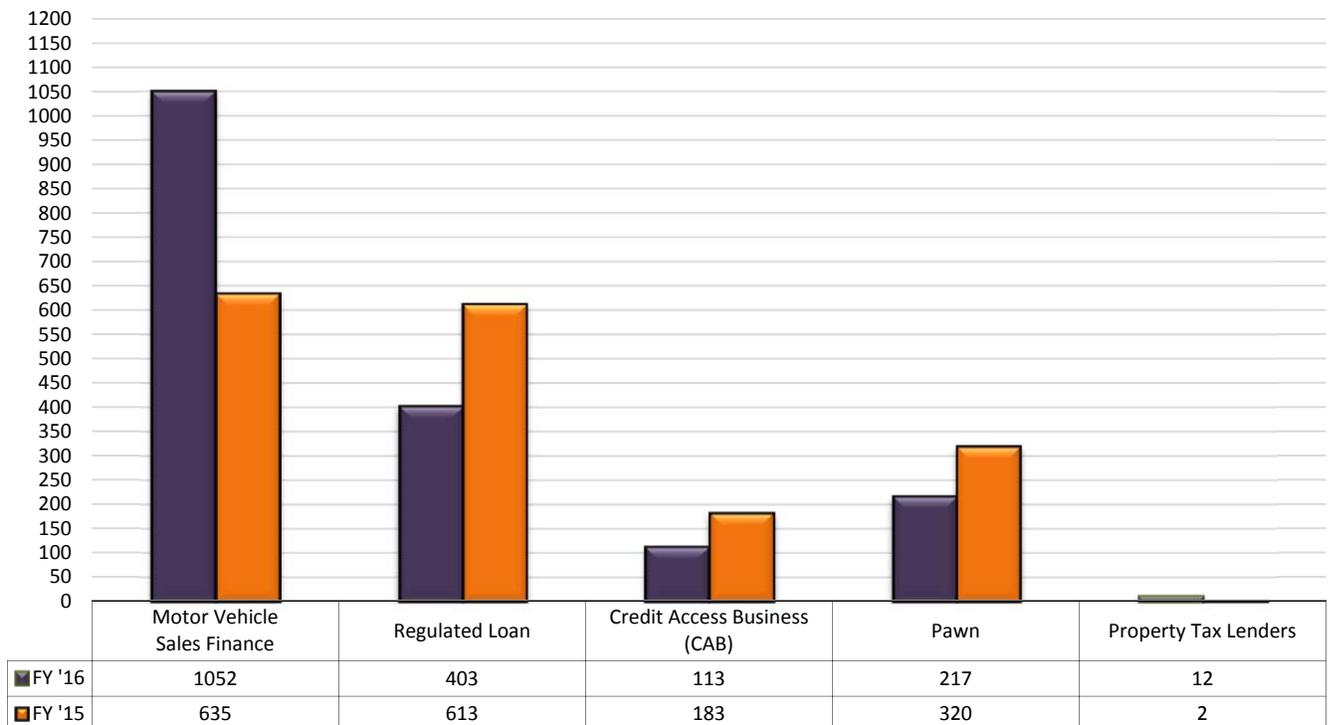


Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

Examinations conducted for Fiscal Year 2016 (FY '16) are at a comparable level to those conducted for the same time period in Fiscal Year 2015 (FY '15). Mid-year FY '16, a total of 1,797 examinations have been conducted as compared to 1,753 examinations in FY '15. Examinations conducted in the areas of Credit Access Business (CAB), Pawn, and Regulated Loan are behind the prior year's pace while examinations conducted for Property Tax Lenders are slightly ahead of FY '15. The increase in the number of completed Motor Vehicle Sales Finance (MVSF) examinations is due to a focused effort to prioritize follow-up examinations in this license type. Additionally, MVSF examinations are being organized and scoped by master files (i.e. headquarter offices) and include associated registered office information reviews. This is a more efficient approach that has increased productivity. Concentration of efforts for the third quarter continues to be Motor Vehicle Sales Finance (MVSF) and CAB examinations.

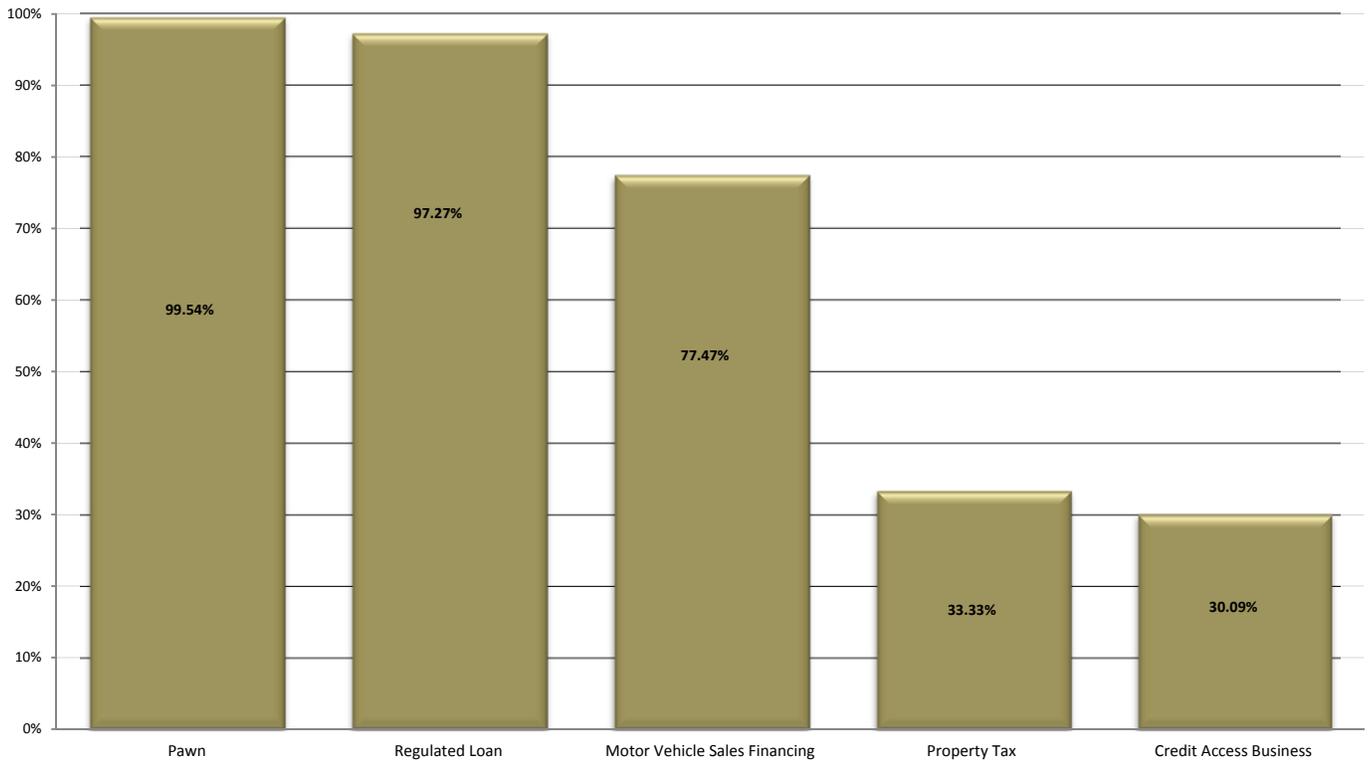
Examinations Conducted: Sept - Feb Fiscal Year Comparison



Houston Assistant Regional Supervisor, Greg Williams, was promoted to Regional Supervisor for Houston as of March 7, 2016. Seven of eight field examiner positions have been filled. Three examiners were hired for the Dallas region, one for San Antonio, and two of three positions filled for Houston. The start date for all new examiners is April 4, 2016 with classroom training scheduled to begin the same day. Interviews continue to be conducted for the one vacant position in Houston.

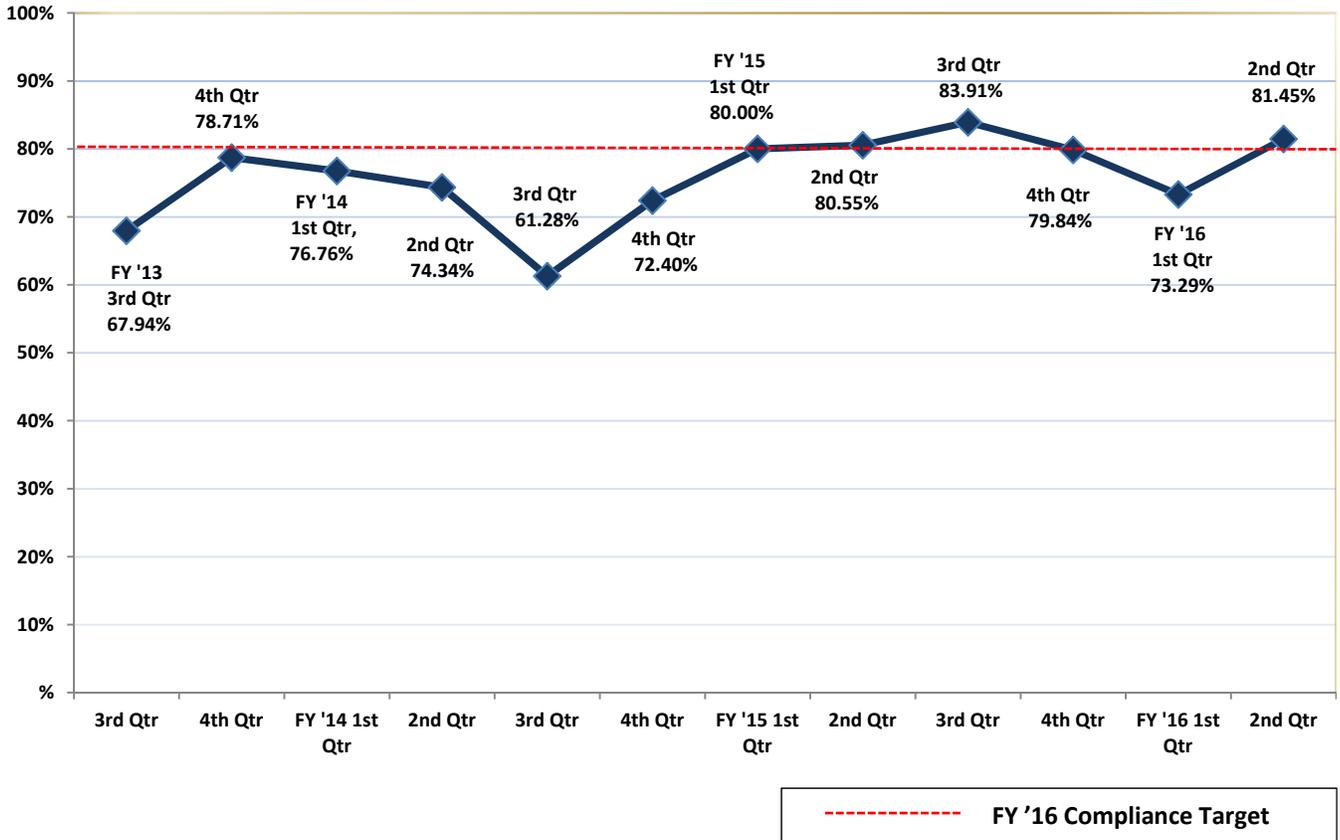
Acceptable level of compliance in the five examination areas is noted on the chart below. Pawn and Regulated Loan examinations conducted are within the acceptable level of compliance. The acceptable level of compliance for MVSF is slightly below the FY '16 target. In the Property Tax and CAB examination areas, the acceptable level of compliance has improved slightly since last reporting period. As the number of completed examinations in both these areas increases, the acceptable level of compliance is projected to improve.

Acceptable Level of Compliance FY '16 (Sept 2015 - Feb 2016)



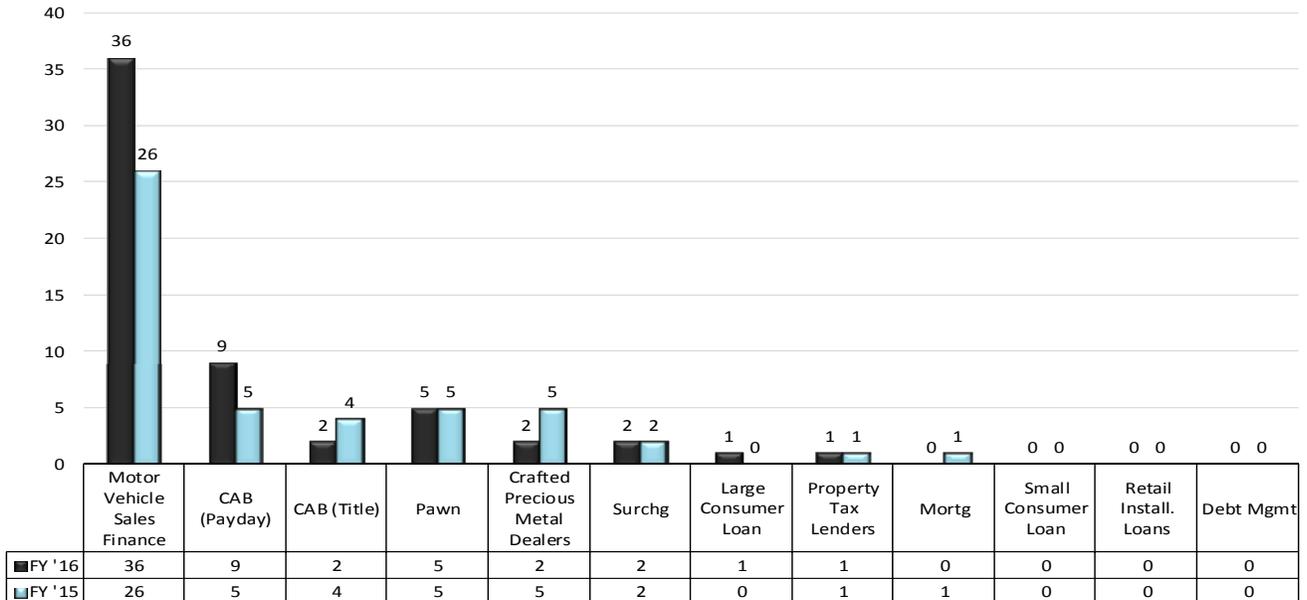
The chart that follows notes a rolling three year comparison of MVSF compliance rates by quarter. The lower acceptable level of compliance in the first quarter of FY '16 in this industry was also magnified by the effect of centralized examinations with unacceptable levels of compliance.

MVSF: Acceptable Level of Compliance Fiscal Year Comparison by Quarter



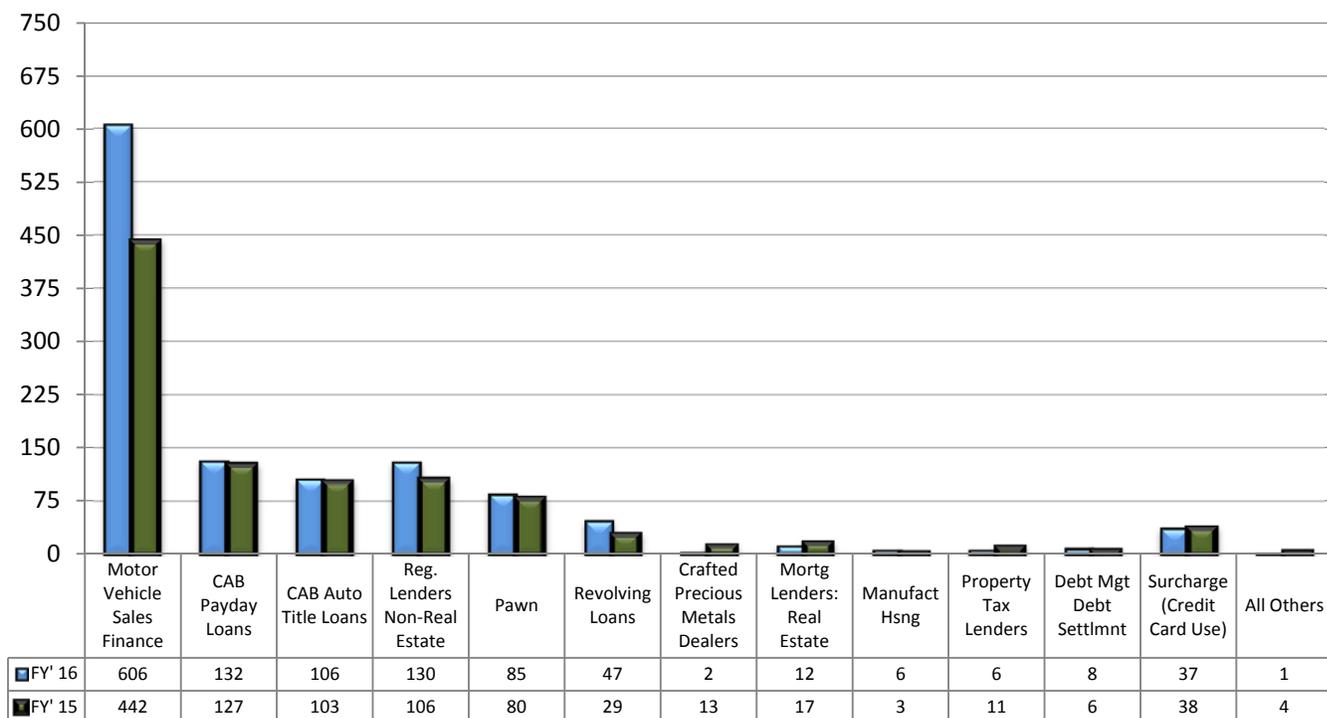
Investigations

Investigations Completed
FY '16 (Sept 2015 - Feb 2016) Total: 58
FY '15 (Sept 2014 - Feb 2015) Total: 49



Consumer Assistance

Complaints Processed
FY '16 (Sept 2015-Feb 2016) Total: 1,178
FY '15 (Sept 2014-Feb 2015) Total: 979



For this reporting period, the complaint categories of MVSF, CAB, Regulated Lenders Non-Real Estate, and Pawn comprise 89.90% of total complaints.

The MVSF category continues to be the largest category (51.44%) at midyear of FY'16. Complaint issues are categorized as: repossessions (16%), payment postings/dispute of account balances (14%), consumer right of rescission (12%), issues related to ancillary products and insurance (10%), unlicensed activity (10%), financing conditioned on subsequent assignments (10%), dispute of contracted price or terms (7%), title issues (7%), mechanical issues (4%) and charges and fees (2%).

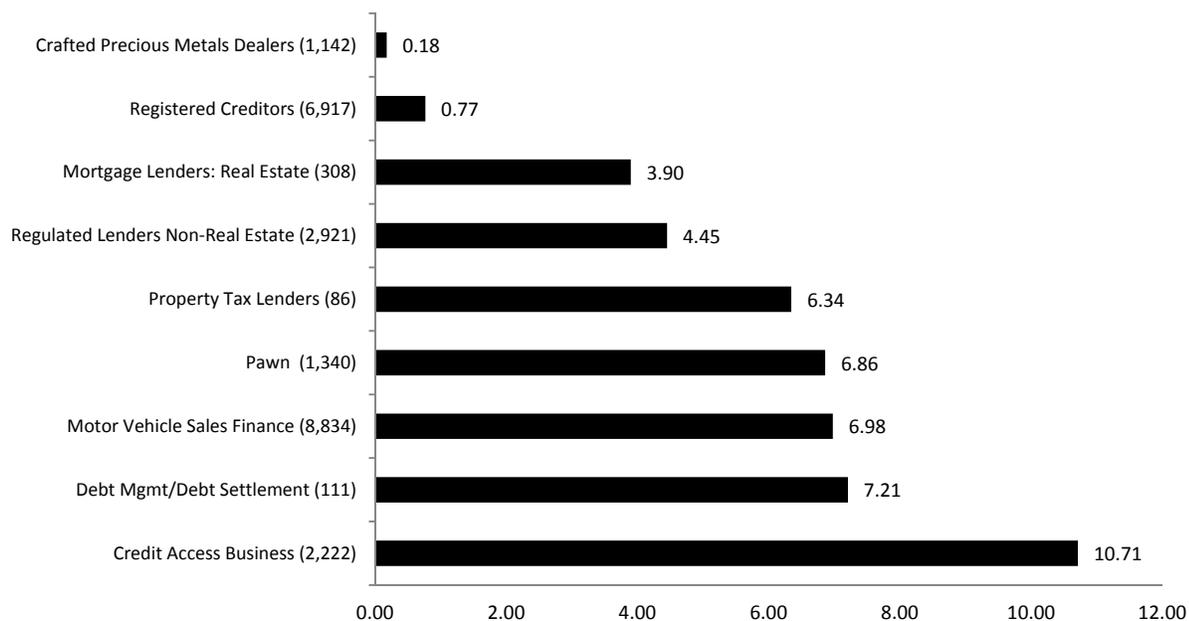
CAB Payday and Auto Tile Loan complaints were the second largest category of complaints, collectively being 20.2%. Separately, payday loan complaints are 10.66% and title loans are 8.62% of total complaints. CAB payday complaints involved: allegations of improper posting of payments and dispute of account balances (40%), allegations of fraud or scams (13%), allegations of id theft/fraudulent loan applications (11%), collection practices (9%), issues with customer service (8%), consumers alleging financial hardship and seeking assistance (5%), and complaints about fee amounts being charged (5%). CAB title loan complaints by type were primarily: allegations of improper posting of payments and balance owed not decreasing (35%), repossessions (15%), release of titles upon payoff (11%), consumers alleging financial hardship and seeking assistance (10%), and charges and fees (9%).

The third largest complaint category was Regulated Lenders Non-Real Estate at 11.04% for this reporting period. Primary issues centered primarily on: allegations of abusive collection practices (30%), allegations of incorrect payoff amount (28%), and issues with customer service (10%).

The fourth largest category at 7.22% was Pawn complaints. The predominant issues were: replacement of lost/damaged goods (31%); redeeming of pawned items (20%); forfeiture of goods (9%); victim assistance in stolen items (9%), pawn service charges (6%); and monitoring the acceptance of goods (5%).

The rank order of complaints processed to the number of active license or registrant population did not change from the previous to current reporting period. The comparison is noted on the chart below. Complaints in the CAB category maintained the highest ratio, followed by Debt Management/Debt Settlement complaints. Motor Vehicle Sales Finance complaints and Pawn complaints had the third and fourth highest ratios respectively.

**Ratio of Complaints Processed to Total Active License or Registrants*
FY '16 (Sept 2015-Feb 2016)**



■ Complaints per Hundred Licenses

*License-Registrant levels as of 03-01-16

CAB REPORTING

Selected annual reporting statistics from the prior two calendar years are presented in the following tables. Overall, the number of customers and new loans showed little change. However, customers increasingly obtained installment loans as opposed to shorter single payment loans. Customers refinance installment loans at a lower rate, which explains the decrease in refinancing activity.

Data as of March 7, 2016 (may be subject to later revisions)

Loan Statistics	Year	Single Payday	Multi Payday	Single Title	Multi Title
Average Loan Amount	2015	\$493	\$541	\$1,421	\$1,043
	2014	\$483	\$543	\$1,227	\$1,043
	Change	2%	0%	16%	0%
Average Fee per \$100 Loaned ¹	2015	\$23.84	\$165.53	\$16.32	\$89.36
	2014	\$23.25	\$151.26	\$19.11	\$100.50
	Change	3%	9%	-15%	-11%
Average Term (in days) ¹	2015	19	159	30	169
	2014	19	152	30	192
	Change	-1%	5%	-1%	-12%
Number of yearly transactions per consumer receiving a new loan ²	2015	4.56	1.63	3.84	1.67
	2014	4.69	1.68	3.70	1.64
	Change	-3%	-3%	4%	2%

Volume Number	Year	Single Payday	Multi Payday	Single Title	Multi Title	Total
Number of consumers obtaining credit (unique to each location)	2015	732,629	701,838	172,425	83,366	1,690,258
	2014	842,714	543,377	250,283	56,469	1,692,843
	Change	-13%	29%	-31%	48%	0%
Number of new extensions (new loans)	2015	1,451,769	956,813	205,643	101,557	2,715,782
	2014	1,584,629	779,941	297,957	63,601	2,726,128
	Change	-8%	23%	-31%	60%	0%
Number of refinances on those extensions ³	2015	1,887,796	185,898	456,729	37,335	2,567,758
	2014	2,370,869	133,612	627,095	29,055	3,160,631
	Change	-20%	39%	-27%	28%	-19%
Total Number of Repossessions	2015			34,431	2,694	37,125
	2014			40,790	3,253	44,043
	Change			-16%	-17%	-16%

Volume Amount	Year	Single Payday	Multi Payday	Single Title	Multi Title	Total
Total dollar amount of new extensions	2015	\$715,010,162	\$517,731,890	\$292,238,954	\$105,914,852	\$1,630,895,858
	2014	\$765,781,935	\$423,719,298	\$365,618,146	\$66,348,805	\$1,621,468,183
	Change	-7%	22%	-20%	60%	1%
Total dollar amount of refinances ⁴	2015	\$1,151,807,598	\$193,528,894	\$927,859,070	\$66,957,126	\$2,340,152,687
	2014	\$1,348,492,095	\$227,471,733	\$1,028,547,443	\$61,877,899	\$2,666,389,170
	Change	-15%	-15%	-10%	8%	-12%
Total dollar amount of CAB fees charged	2015	\$417,665,210	\$825,358,182	\$236,553,054	\$50,586,444	\$1,530,162,890
	2014	\$486,189,667	\$614,702,693	\$238,835,170	\$85,951,743	\$1,425,679,272
	Change	-14%	34%	-1%	-41%	7%
Total Volume Per Category	2015	\$2,284,482,970	\$1,536,618,966	\$1,456,651,078	\$223,458,422	\$5,501,211,436
	2014	\$2,600,463,697	\$1,265,893,723	\$1,633,000,758	\$214,178,446	\$5,713,536,625
	Change	-12%	21%	-11%	4%	-4%

¹ Average Data from Quarterly Reports

² Number takes into account the new loan and refinances between Jan 1 - Dec 31

³ Number does not include refinances on new loans made prior to Jan 1

⁴ Number includes all refinancing activity



Licensing Report

Mirand Zepeda, Manager

Renewals

Renewal for Debt Management Service Provider registration ended at the beginning of February, with approximately 90% of registrants completing renewal. The department is preparing and looking ahead to renewals for pawn shops and pawn employees coming up in June, as well as Motor Vehicle Sales finance renewal coming up in July. For upcoming renewals the department plans to incentivize online renewal while providing exceptional technical support and customer service.

Applications Processing

The licensing department has reduced pending applications by nearly 50%, compared to the amount pending in February of 2015. The team continues to diminish the volume of pending business applications while receiving a higher than average volume. Nearly 200 applications were received in February which is much more than the monthly average of about 150 for the last year. Motor vehicle sales finance license applications constituted about 63% of the incoming applications for the last year. Additionally, regulated lenders made up about 25% of applications received. The department anticipates exceeding 9,000 total motor vehicle sales finance licenses issued by the end of Q3.

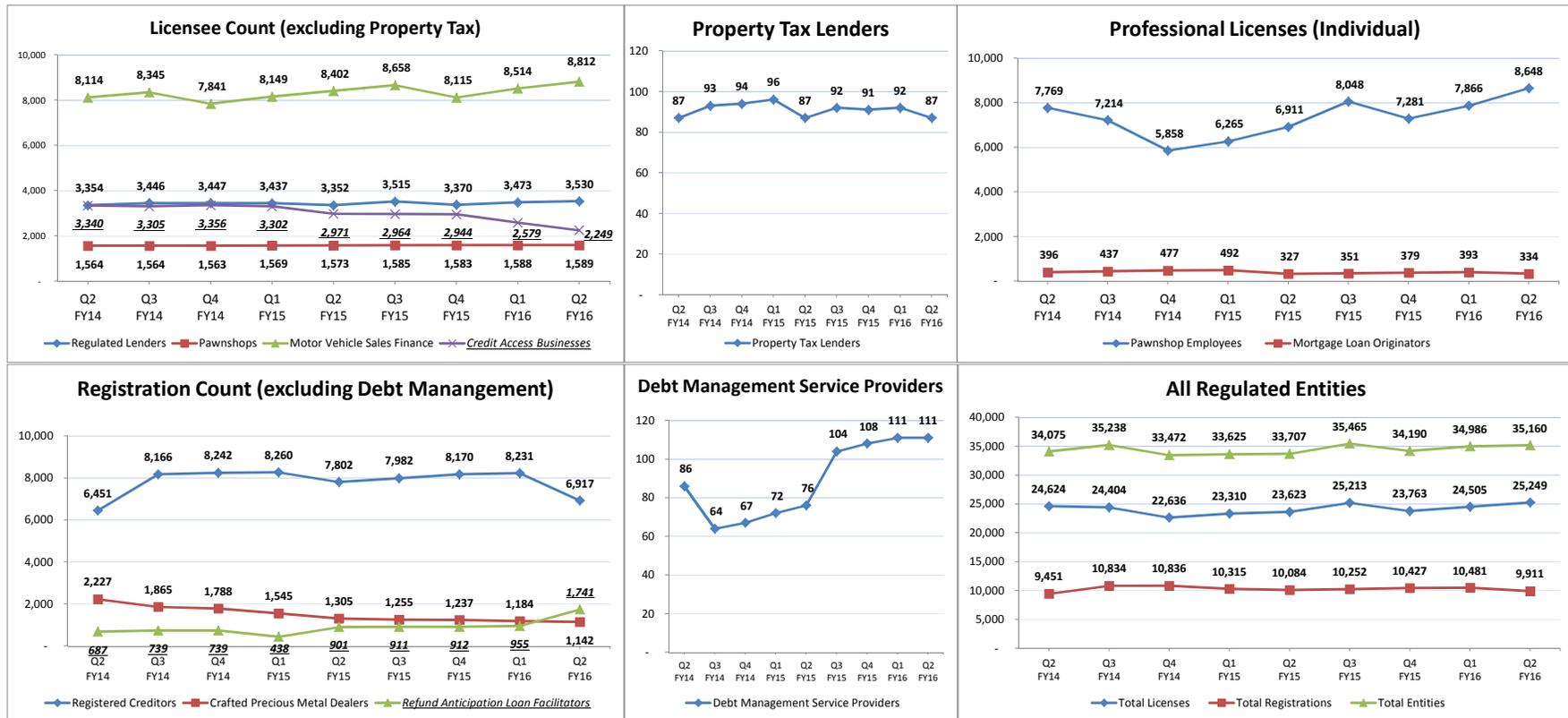
Pending pawn employee applications also have been drastically reduced, reaching the lowest numbers since ALECS was launched in 2014. Filling the position for a licensing specialist who primarily deals with pawn employee applications has contributed to these gains, along with large organizations submitting applications online via ALECS, which allows the department more time and resources to review applications.

With regard to ALECS online accounts, approximately 60% of licensees have an ALECS account. The department is always looking for ways to improve the system and increase account users.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2014 and 2015, and the most recent quarterly data, as of February 29, 2016.

Number of OCCC Regulated Entities Quarterly Comparison of FY 14 & 15 with Current Data





Communications, Human Resources & Administration Report

Juan V. Garcia, Director of Strategic Communications, Administration and Planning

Legislative Update/ Strategic Planning /Stakeholder Engagement & Communication

On March 29, 2016, Commissioner Pettijohn and staff attended the Investment and Financial Services Interim Committee Hearing held at the Capitol. The Committee met to hear an update on the agency and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. Commissioner Pettijohn testified and updated the members on recent industry activities, rulemaking and litigation.

Commissioner Pettijohn and staff invited stakeholders from all regulated entities to participate in a planning session in preparation for the upcoming Strategic Plan 2017-2021. The meeting was held on March 9, 2016 at the Robert E. Johnson Building.

An all-inclusive session was conducted for stakeholders to provide input and feedback relative to specific industries and business operations. The Commissioner provided a general overview of the strategic planning process and invited participants to discuss

- Issues that are important to stakeholders (organizational and associations alike).
- The industry's vision of the future related to regulated operations.
- Regulatory concerns or issues facing the industry or consumers.
- The agency's opportunities for becoming better regulators.

During the discussions, Commissioner Pettijohn identified the agency's top five priorities:

1. Technology and Communication
2. Federal Influences and Concurrent Regulatory Efforts
3. Projected Growth and Decline in Regulated Populations
4. Financial Education Initiatives
5. OCCC Internal Priorities

Representatives from a cross section of the industries licensed or regulated by the OCCC, and a group representing consumers participated. Groups participating included the Texas Independent Automobile Dealers Association (TIADA), Texas Property Tax Lenders Association (TPTLA), Consumer Service Alliance of Texas (CSAT), Texas Consumer Finance Association (TCFA), Texas Association of Pawn Brokers (TAPB) and Texas Appleseed, which advocates for consumers.

Agency staff continues to provide a combination of live presentations and advisory publications to licensees. Huffman Lewis, Financial Examiner, Austin, and Veronica Celis-Gonzalez, Financial Examiner, SATX Region, presented at the Dealer Training for the Texas Department of Motor Vehicles on February 18, in McAllen. Eric Fancher, Financial Examiner, Dallas, made a similar presentation at the TxDMV seminar on March 17, in Abilene. William Purce, Senior Review Examiner, Austin, presented to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs training on March 8, 2016 in Austin.

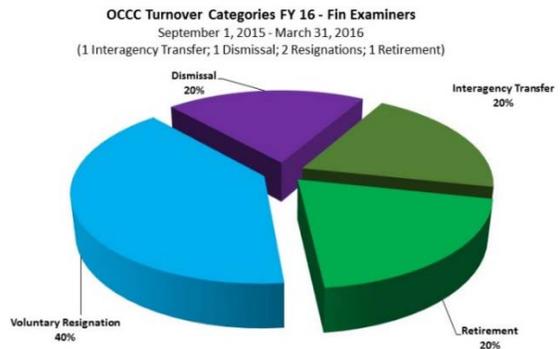
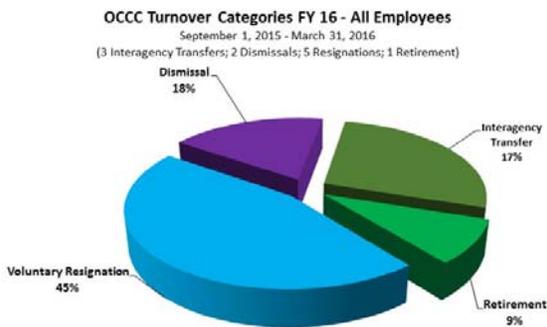
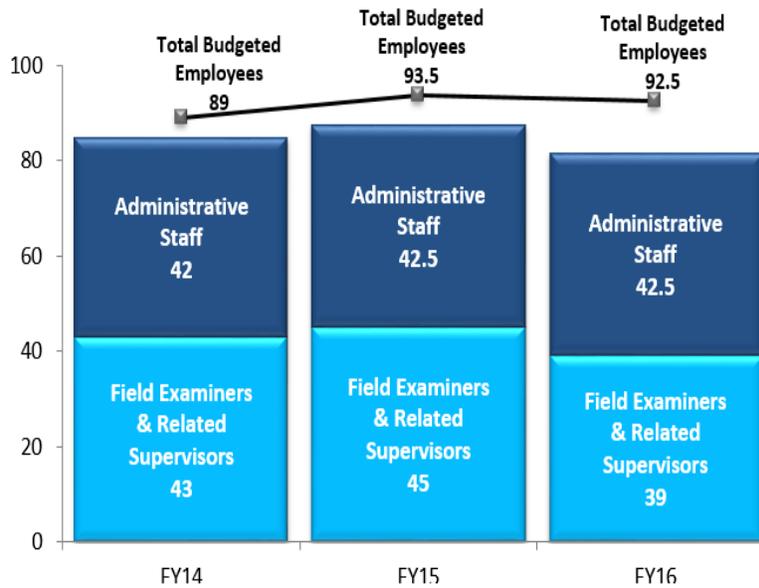
Human Resources

For this reporting period (February-March), the agency had two staff members depart the agency: HR Specialist V and a Program Specialist. However, during this same period, the agency filled the following: HR Specialist V, Accountant IV and Licensing & Permit Specialist II, allowing our FTE count to hold steady at 81.5 FTEs. The HR Specialist V transferred to another state agency and the Program Specialist found work in the private sector. The current overall turnover ratio is 13.17%. However, when excluding retirement from the overall ratio, the percentage is 11.98%.

Current recruiting efforts continue to be the focus on filling positions both in the field and in the Austin office. For the next reporting cycle, an update will be provided on the recently hired FE I candidates.

Current FY 16 Vacancies	
Vacancy	Status
Financial Examiner I – Houston (1 Opening)	Active
Financial Examiner IV-Assistant Regional Supervisor – Houston	Active
Information Specialist	Active

OCCC Employee Data FY 13 - FY 16



Financial Literacy

The Financial Education Specialist departed early March and the department is actively searching for a suitable replacement. To date, staff has reached 85 of the 325 consumers projected in the FY16 performance measure, through live presentations and a webinar presentation.



Accounting & IT Reports

Accounting

The accounting department has been devoting time and resources to training recently hired staff, the accounting technician and a new accountant, who started in March. In addition, the accounting manager attended a meeting regarding CAPPs (Centralized Accounting and Payroll/Personnel System) which is the new Statewide Enterprise Resource Planning System for financial and HR information, hosted and maintained by the Comptroller of Public Accounts. Roughly 11 large agencies have already implemented CAPPs. For other agencies, CAPPs is being implemented at various time frames and will ultimately be required to be used by all state agencies.

Information Technology-Legacy Modernization

Legacy Modernization

The agency has terminated external, contracted maintenance for ALECS which has been taken over by the agency's internal programmer. Staff continues to address minor process improvements and fix bugs, but the primary focus is currently on developing the compliance portion of the Annual Reporting, Complaints and Examination project.

Requirements have been finalized for annual/quarterly reporting, complaint processing, investigations, examination and legal enforcement. The software vendor, Sistema Technologies, has begun back-end preparation for developing these modules.

Security Enhancements

The agency is implementing a new firewall solution, with enhanced security features including URL filtering, Intrusion Detection, Intrusion Prevention and Advanced Malware Protection. The device is configured and is scheduled to be installed in April.

Mobility Upgrades

The agency is currently testing features on new mobile hardware to enhance mobility and security, for use by OCCC field examiners.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of February 29, 2016

	FY 2014	FY 2015	FISCAL YEAR 2016				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	22,977	8,315	4,348	6,390			10,738
Regulated Lenders Examinations	1,106	1,065	173	230			403
Property Tax Lender Examinations	34	23	10	2			12
Pawnshop Examinations	593	533	112	105			217
Motor Vehicle Examinations	1,247	1,565	513	539			1,052
Credit Access Businesses Examinations	1,031	816	101	12			113
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,067	1,186	337	262			599
Written Complaints Received	976	1,000	221	209			430
Total Complaints Processed	1,915	2,131	650	528			1,178
% of Written Complaints Closed within 90 Calendar Days	90.60%	82.47%	95.72%	95.14%			95.14%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	321	472	83	75			158
Finalized	335	390	95	89			184
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,447	3,370	3,473	3,530			3,530
Pawnshop Licenses	1,563	1,583	1,588	1,589			1,589
Pawnshop Employee Licenses	5,858	7,281	7,866	8,648			8,648
Commercial MV Sales Fin. Licenses	16	19	25	27			27
Motor Vehicle Sales Finance Licenses	7,825	8,096	8,489	8,795			8,795
Property Tax Loan Licenses	94	91	92	87			87
NMLS-Mortgage Loan Originators	477	379	393	334			334
Credit Access Business Licenses	3,356	2,944	2,579	2,249			2,249
Registrations							
Registered Creditors	8,242	8,170	8,231	6,917			6,917
Crafted Precious Metal Dealers	1,788	1,237	1,184	1,142			1,142
Debt Management Service Providers	67	108	111	111			111
Refund Anticipation Loan Facilitators	739	912	955	1,741			1,741
Applications							
Business -- New	1,427	1,832	409	469			878
Business -- Change of Ownership	473	624	139	49			188
Pawnshop Employees -- New	2,011	3,010	715	974			1,689
HUMAN RESOURCES DATA							
Field Examiners Staffing	42	43	41	38			38
Total Staffing	83	85.5	81.5	80.5			80.5

Office of Consumer Credit Commissioner
Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2016 Target	2016 Quarter Actual	2016 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1	COMPLAINT RESOLUTION				
	1. # COMPLAINTS CLOSED				
	Quarter 1	2,100	648	648	30.86% *
	The agency experienced a 47.5% increase in processed complaints in the motor vehicle finance category over the same quarter in FY '15. This may be partially attributed to a nationwide increase in motor vehicle sales in calendar year 2015.				
	Quarter 2	2,100	532	1,180	56.19% *
	There was a 37.1% increase in processed complaints in the motor vehicle finance category over the first two quarters in FY '15. The increase in motor vehicle sales in calendar year 2015 continues to be a factor in exceeding the overall processed complaint target.				
	2. # INVESTIGATIONS CLOSED				
	Quarter 1	86	29	29	33.72% *
	A concerted effort has been made to close older investigations.				
	Quarter 2	86	29	58	67.44% *
	Efforts are being made to hold the average investigation time to less than 180 days and a more dedicated effort is being made to address unlicensed activity.				
2-1-1	EXAMINATION AND ENFORCEMENT				
	1. # COMPLIANCE EXAMINATIONS PERFORMED				
	Quarter 1	4,000	909	909	22.73%
	Quarter 2	4,000	888	1,797	44.93% *
	The agency completed 1,797 examinations as of February 29, which is 89.9% of the prorated goal for mid-year and three examinations shy of the 5% tolerance for performance measures. Five of seven field examiner vacancies have now been filled, with a new examiner class scheduled to begin on April 4, 2016.				

2-2-1	LICENSING				
	1. # BUSINESS APPLICATIONS PROCESSED				
	Quarter 1	1,875	409	409	21.81%
	Quarter 2	1,875	469	878	46.83%
	2. # INDIVIDUAL LICENSES PROCESSED				
	Quarter 1	2,500	715	715	28.60%
	Quarter 2	2,500	974	1,689	67.56% *
	<p>Increased efficiencies in ALECS, a higher volume of incoming pawn employee applications in Q2, and the department filling a vacancy for a license and permit specialist who primarily processes pawn employee applications all contributed to significant gains in individual licenses processed. These numbers will likely even out in Qs 3 & 4 as the department reallocates resources and incoming applications drop back down to average.</p>				
3-1-1	# CONSUMERS RECEIVING FINANCIAL EDUCATION				
	Quarter 1	325	46	46	14.15% *
	<p>The first quarter of FY 2016 required heavy concentration on preparing, reviewing and selecting the second cycle of TFEE funds to new recipients, effective January 2016. With the new funding cycle underway, staff is able to focus on achieving end of fiscal year consumer education goals.</p>				
	Quarter 2	325	39	85	26.15% *
	<p>Staff remained focused on TFEE grant efforts through the end of February, presenting one consumer training in the second quarter before the staff member resigned from the agency in early March. Efforts are underway to fill this position with the goal to reach this measure by the end of the fiscal year.</p>				

* Varies by 5% or more from quarterly or year-end targets.



Legal Department Report

Michael Rigby, General Counsel

April 2016

Enforcement Report

Pawnshop – Annual Report

In October 2015, the OCCC assessed an administrative penalty against A D Pawn & Jewelry, Inc. (“A D Pawn”) for failing to file its 2014 annual report, as required under 7 Tex. Admin. Code § 85.502. In March 2016, the OCCC notified A D Pawn that a hearing would be held on the revocation of its pawnshop license for violating § 85.502, for failing to comply with the order, and for failing to pay a charge imposed by the Commissioner. On March 31, 2016, a hearing was held at the State Office of Administrative Hearings (“SOAH”) before an Administrative Law Judge. A D Pawn did not appear at the hearing. The proposal for decision in this matter is currently pending with the Administrative Law Judge.

Credit Access Business – Quarterly Report

In November 2015, the OCCC assessed an administrative penalty of \$800 against Max Money Enterprises Inc. d/b/a EZMax Loans, et al. for failing to timely file 2015 3rd quarter reports for each of its eight licensed locations. Max Money did not file its 3rd quarter reports on or before October 30, 2015, as required under Tex. Fin. Code § 393.627 and 7 Tex. Admin. Code § 83.5001. Max Money timely requested a hearing on the administrative penalty.

On January 13, 2016, a hearing was held at the SOAH before an Administrative Law Judge. On March 9, 2016, the Administrative Law Judge issued a proposal for decision holding that Max Money’s violation was not committed “knowingly and wilfully,” as required for the OCCC to assess an administrative penalty under Tex. Fin. Code § 14.251. On March 24, 2016, the OCCC filed exceptions to the proposal for decision. Max Money’s response to the OCCC’s exceptions is due by April 8, 2016.

Administrative Rule Report

Rulemaking Process

The Finance Commission is the policy making body for the OCCC and the other finance agencies. The Commission adopts rules to implement, interpret, or prescribe law or policy, or describe procedure or practice requirements. The OCCC initially drafts a proposed rule, and normally provides the draft to interested stakeholders. The agency may also hold a meeting with stakeholders to discuss the proposal and solicit ideas. The stakeholders provide the agency with feedback, and the agency may revise the draft in response. The agency presents the revised draft to the Commission during its meeting. The Commission may vote to publish the proposed rule in the *Texas Register*.

Following publication of the proposal, the public has 30 days to submit formal comments. The OCCC reviews, summarizes, and responds to each comment. The OCCC may recommend changes to the rule, or state why it disagrees with a comment. The OCCC presents its analysis, and any recommended changes, to the Commission. The Commission may then vote to adopt the proposal. If adopted, the rule usually becomes effective 20 days after the OCCC submits it to the Secretary of State for publication in the *Texas Register*.

April Rule Actions

At the April meeting, the OCCC is presenting three proposed rules. All three result from a review process required by Texas law every four years. Each rule is reviewed to determine if the reasons for initially adopting the rule still exist. The OCCC may recommend the rule be repealed or amended, if necessary. The OCCC uses the rule review process to update, improve, streamline, and make technical corrections to the agency's rules.

Motor Vehicle Sales Finance. The OCCC proposes adoption of amendments, new rules, and repeal of existing rules regarding motor vehicle sales finance resulting from a review of 7 TAC, Part 5, Chapter 84. The changes relate to the following issues:

- deferment charges,
- documentary fees,
- debt cancellation agreements,
- licensing processes, and
- technical corrections.

Interpretation and Advisory Letters. The OCCC proposes adoption of amendments to 7 TAC, Part 1, Chapter 1, relating to official interpretations and advisory letters resulting from a review of this chapter. The proposed changes provide clarification, improved grammar, better readability, and technical corrections.

Agency Administration. The OCCC proposes adoption of amendments to 7 TAC, Part 5, Chapter 82, concerning the agency's administration rules. The proposed changes:

- update authorized viewers of criminal history information,
- update public information procedures,
- clarify the requirements to request a criminal history evaluation letter,
- clarify the recipients of consumer complaint procedures, and
- make technical corrections.

Upcoming Rule Actions

At upcoming commission meetings, the OCCC also plans to present rule actions regarding the following issues:

- Amendments to rules for regulated lenders, including technical corrections in compliance with recent state law and federal regulations, and conforming licensing application procedures parallel to those for credit access businesses and motor vehicle sales finance licensees.
- Amendments relating to rule review for tax refund anticipation loans, including updates to registration procedures and technical corrections.
- Amendments to rules for credit access businesses, including technical corrections in compliance with recent federal regulations, and clarification on criminal history information of applicants.
- Amendments to rules for pawnshops, including technical corrections in compliance with recent state law and federal regulations, and conforming licensing application procedures parallel to those for credit access businesses and motor vehicle sales finance licensees.

Performance Report

The following table summarizes enforcement actions completed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of March 31, 2016. These figures reflect actions that have been fully resolved with a final order. Actions that are still pending are not included in the table. The table does not include license application denial actions. The OCCC completed 25 denial actions in Fiscal Year 2015. As of January 31, 2016, the OCCC has completed eight application denial actions in Fiscal Year 2016.

Enforcement Actions Completed as of March 31, 2016				
	FYTD 2016	FY 2015	FY 2014	FY 2013
Revocation / Suspension Actions				
Regulated Loan License	1	27	10	3
Pawnshop License	1	2	1	1
Pawnshop Employee License	2	2	1	2
Credit Access Business	2	1	4	0
Motor Vehicle Sales Finance License	7	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0
Total Revocation / Suspension Actions	13	38	24	9
Cease & Desist Actions				
Regulated Loan License	0	1	0	1
Pawnshop License	1	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	0	1	4	1
Motor Vehicle Sales Finance License	9	12	8	13
Property Tax Loan License	0	1	2	1
Crafted Precious Metal Dealer	0	3	0	0
Registered Creditor (Ch. 345)	0	0	0	1
Debt Management Services (Ch.394)	0	6	1	1
Credit Card Surcharge (Ch. 339)	2	1	0	0
Unlicensed Activity – Other Chapters	0	0	2	10
Total Cease & Desist Actions	12	25	17	28
Administrative Penalty Actions				
Regulated Loan License	0	73	121	144
Pawnshop License	35	4	6	9
Pawnshop Employee License	1	4	8	8
Credit Access Business License	67	136	56	52
Motor Vehicle Sales Finance License	59	76	88	112
Property Tax Loan License	3	8	18	12
Crafted Precious Metal Dealer	1	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	166	301	298	337
Total Enforcement Actions Closed	191	364	339	374

From February 1, 2016 to March 31, 2016, the OCCC:

- issued 44 final orders,
- opened 42 cases in order to assess administrative penalties,
- opened four cases in order to issue administrative injunctions,
- held two administrative hearings, and
- dismissed one administrative hearing.

The OCCC has 2 hearings scheduled between April 1, 2016 and May 31, 2016.

Litigation

Rowell v. Pettijohn:

The Fifth Circuit Court of Appeals has ruled in the OCCC's favor, dismissing a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. *Rowell v. Pettijohn*, No. 15-50168, 2016 WL 825396, 2016 U.S. App. LEXIS 3961 (5th Cir. Mar. 2, 2016). The plaintiffs argued that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution. The Fifth Circuit held that the law is a price regulation rather than a speech regulation, and that it is not void for vagueness. This decision affirmed the district court's ruling, which granted the OCCC's motion to dismiss the lawsuit. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

The plaintiffs' deadline to appeal the case to the U.S. Supreme Court is May 31, 2016. The plaintiffs did not file a motion for rehearing with the Fifth Circuit by the applicable deadline, which was March 16.

The full style of the case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The Fifth Circuit's case number is 15-50168, and the district court's case number is 1:14-cv-00190-LY. The OCCC is being represented by two divisions of the Office of the Attorney General: the Office of Solicitor General and the Financial Litigation, Tax, and Charitable Trusts Division.

Similar cases have been filed in three other states:

- The Second Circuit upheld New York's credit card surcharge law. *Expressions Hair Design v. Schneiderman*, 808 F.3d 118 (2d Cir. 2015), *reversing* 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The Second Circuit denied the plaintiffs' motion for rehearing. The plaintiffs' deadline to appeal the case to the U.S. Supreme Court is April 12, 2016.
- The Eleventh Circuit struck down Florida's credit card surcharge law. *Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235 (11th Cir. 2015), *reversing* no. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The Eleventh Circuit denied the State of Florida's motion for rehearing. The state's deadline to appeal the case to the U.S. Supreme Court is April 12, 2016.
- A federal district court struck down California's credit card surcharge law. *Italian Colors Rest. v. Harris*, 99 F. Supp. 3d 1199 (E.D. Cal. 2015). The State of California has appealed this case to the Ninth Circuit.

State of Texas v. LowerMyBills, Inc.

In December 2014, the Consumer Protection Division of the Office of the Attorney General filed a lawsuit in Dallas County district court against Experian Information Solutions, Inc. and LowerMyBills, Inc., a former subsidiary of Experian, alleging violations of the DTPA. The lawsuit sought injunctive relief, restitution, and civil penalties against both companies. In May 2015, the attorney general filed an

amended petition alleging violations of Chapter 394 and is representing the OCCC as to those violations.

As of March 31, 2016, the case has been settled as to Experian and is pending trial as to LowerMyBills. The full style of the case is *State of Texas v. LowerMyBills, Inc. and Experian Information Solutions, Inc.* The district court's case number is DC-14-14587.

ACE Cash Express, Inc. v. City of Denton:

Several credit access businesses (CABs) have sued cities, arguing that CAB ordinances are preempted under state law. In June 2015, the Fort Worth court of appeals rejected a challenge to Denton's CAB ordinance, finding that the CAB had not demonstrated a sufficient harm to its property interests to provide a state court with jurisdiction to hear the case. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963, 2015 Tex. App. LEXIS 5723 (Tex. App.—Fort Worth June 4, 2015, pet. filed) (mem. op.). The decision of the court of appeals was based partly on a 2014 Dallas court of appeals decision, which rejected a challenge to Dallas's CAB ordinance for similar reasons. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.). On September 14, 2015, ACE Cash Express filed a petition for review with the Texas Supreme Court to appeal the case under case number 15-0523. The Texas Supreme Court requested briefs on the merits. ACE Cash Express filed its brief on March 21, 2016.

Property Tax Lender TILA Litigation:

A case is pending in the Fifth Circuit Court of Appeals about whether the federal Truth in Lending Act (TILA) applies to Texas property tax lenders. Federal district judges in San Antonio have issued conflicting decisions on this issue. In one case, the court held that TILA does not apply to property tax lenders, and granted the property tax lender's motion to dismiss the borrower's TILA claims. *Billings v. Propel Fin. Servs., LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014). However, in three other cases, the court held that TILA does apply to property tax lenders and denied the lenders' motions to dismiss. *Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014); *Torres v. Propel Fin. Servs., LLC*, No. 5:14-cv-01040-HLH (W.D. Tex. Jan. 22, 2015); *Orosco v. Ovation Lending, LLC*, No. 5:14-cv-00897-XR (W.D. Tex. Feb. 9, 2015).

These four decisions have been appealed to the Fifth Circuit, and they have been consolidated with each other under case number 14-51326. The parties have filed their briefs on the merits. In addition, the Consumer Financial Protection Bureau filed an amicus curiae brief with the Fifth Circuit, arguing that TILA applies to Texas property tax lenders. Oral argument before the Fifth Circuit was held on March 1, 2016.

There are two other cases pending in federal district court on the same issue: *Ramos v. FGMS Holdings, LLC*, No. 5:14-cv-00860-FB (W.D. Tex., filed Oct. 1, 2014); and *Castano v. FGMS Holdings, LLC*, No. 5:14-cv-00949-OLG (W.D. Tex., filed Oct. 28, 2014).

Advisory Bulletins

From February 1, 2016 to March 31, 2016, the OCCC issued one advisory bulletin. OCCC bulletin B16-2 describes common issues that the OCCC has encountered in reviewing motor vehicle debt cancellation agreements under Chapter 348 of the Finance Code. The bulletin describes several provisions that must be included in a debt cancellation agreement, as well as several inconsistent or misleading provisions that may not be included.

Interpretation Requests

From February 1, 2016 to March 31, 2016, the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of March 31, 2016.

Open Records Requests

From December 1, 2015 to January 31, 2016, the OCCC processed and responded to 48 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

- On March 8, 2016, the American Association of Residential Mortgage Regulators provided a Spring Training School Scholarship valued at \$945.
- On February 15, 2016, the State Regulatory Registry LLC provided a 2016 NMLS Conference Scholarship valued at \$1,377.

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Motor Vehicle Installment Sales - Adopt Amendments, New Rules, and Repeals (from Rule Review) 7 TAC, Part 5, Chapter 84</p> <p>To provide clarification regarding deferment charges and time price differential, documentary fees, debt cancellation agreements, licensing processes and annual renewal statement; and to make technical corrections</p> <p><i>Precomment draft distributed January 13, 2016</i> <i>Stakeholders meeting held February 3, 2016</i></p>	02/19/16	Presented for Adoption 04/15/16
<p>Consumer Credit Regulation - Adopt Completed Rule Review 7 TAC, Part 1, Chapter 1</p> <p>To adopt the completed rule review under Tex. Gov't Code, §2001.039</p>	Not applicable	Presented for Adoption 04/15/16
<p>Administration - Adopt Completed Rule Review 7 TAC, Part 5, Chapter 82</p> <p>To adopt the completed rule review under Tex. Gov't Code, §2001.039</p>	Not applicable	Presented for Adoption 04/15/16
<p>Interpretations and Advisory Letters - Proposed Amendments (from Rule Review) 7 TAC, Part 1, §1.201</p> <p>To provide clarification, improved grammar, better readability, and technical corrections</p>	04/15/16	
<p>Administration - Proposed Amendments (from Rule Review) 7 TAC, Part 5, Chapter 82</p> <p>To update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections</p>	04/15/16	

Rule Item/Purpose	Proposal Date	Adoption Date
<p>Rules for Regulated Lenders - Amendments 7 TAC, Chapter 83, Subchapter A</p> <p>To make technical corrections in compliance with recent state law and federal regulations, and to conform licensing application procedures to other regulated areas</p>	06/10/16	
<p>Tax Refund Anticipation Loans - Rule Review 7 TAC, Chapter 87</p> <p>To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to update registration procedures and technical corrections</p>	06/10/16	
<p>Rules for Credit Access Businesses - Amendments 7 TAC, Chapter 83, Subchapter B</p> <p>To make technical corrections in compliance with recent federal regulations, and to clarify criminal history information of applicants</p>	08/19/16	
<p>Rules for Operation of Pawnshops - Amendments 7 TAC, Chapter 85, Subchapter A</p> <p>To make technical corrections in compliance with recent state law and federal regulations, and to conform licensing application procedures to other regulated areas</p>	08/19/16	

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments, New Rules, and Repeals in 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

PURPOSE: The purpose of the adoption regarding these rules for motor vehicle installment sales is to implement changes resulting from the commission's review of Chapter 84 under Texas Government Code, §2001.039. The rule changes relate to the following issues: deferment charges and time price differential, documentary fees, debt cancellation agreements, licensing processes and annual renewal statement, and technical corrections. Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeals in 7 TAC, Chapter 84 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments, new rules, and repeals in 7 TAC, Chapter 84.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. The commission adopts amendments to §§84.102, 84.201, 84.203, 84.601, 84.605, 84.607, 84.610, 84.611, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §§84.205, 84.309, 84.604, and 84.613.

The adopted changes affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Retail Installment Contract; Subchapter C, concerning Insurance and Debt Cancellation Agreements; Subchapter F, concerning Licensing; Subchapter G, concerning Examinations; and Subchapter H, concerning Retail Installment Sales Contract Provisions.

The commission adopts the amendments to §§84.102, 84.201, 84.601, 84.605, 84.607, 84.610, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §84.309 and §84.604, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613).

The commission adopts the amendments to §84.203 and §84.611; and adopts new §84.205 and §84.613 with changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613). These changes are being made in order to provide additional clarification and address the

official comments received, as discussed in the following paragraph.

The commission received two written comments on the proposal from the American Financial Services Association (AFSA) and the Texas Automobile Dealers Association (TADA).

The AFSA comment requests clarification regarding the proposed amendments in §84.203 and §84.611(e). First, regarding deferment charges in §84.203, the AFSA comment requests additional guidance relating to the definition of and calculation of a deferment charge. Second, the AFSA comment also requests clarification on the proposed amendments to §84.611(e), specifically concerning the definition of retail installment contracts "serviced" and the calculation of dollar volume of contracts. Third, the AFSA comment included suggestions for the model contract in §84.809(b). The AFSA comment does not address the other rule changes included in the proposal.

The TADA comment solely relates to new §84.205, Documentary Fee (repeal and replace), and supports the proposed increase in the amount that does not require a cost analysis from \$125 to \$150. The comment provides recommendations regarding four issues contained in the documentary fee rule as proposed (outlined in the next paragraph), but is silent with respect to the other changes included in the proposal.

The TADA comment offers suggestions related to the following four documentary fee issues: 1) form for notification

(§84.205(c)(3)); 2) facilities costs (§84.205(d)(3)(B)(v)); 3) depreciation (§84.205(d)(3)(B)(v)); and 4) commission employee compensation (§84.205(d)(3)(B)(i)(I)).

The commission's responses to the official comments received are included after the purpose discussions following each respective rule provision receiving comments.

In general, the purpose of this rule adoption regarding 7 TAC, Chapter 84 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 84 was published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 637). The commission received no comments in response to that notice.

The adopted rule changes relate to the following issues: deferment charges and time price differential, documentary fees, debt cancellation agreements, licensing processes and annual renewal statement, and technical corrections. Additionally, §§84.205, 84.604, and 84.613 have been repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received two informal written precomments. Certain concepts recommended by the precommenters were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new rules, and repeals are provided in the following paragraphs.

I. Deferment charges and time price differential

An amendment to §84.102 clarifies the definition of "deferment charge" to remove the phrase "The payment of an additional."

Adopted amendments throughout §84.201 provide updated internal references and citations. Additionally, in Figure §84.201(d)(2)(B)(iii), an amendment will correct a typographical error. For 61 months and \$15.00 add-on rates per \$100, the figure's current rate of 26.6341% will be replaced by the correct rate of 24.6341%.

The adoption includes several amendments to §84.203, which relates to deferment charges. In general, the purpose of these amendments is to clarify the requirements for calculating and charging deferment charges, which are authorized under Texas Finance Code, §348.114. In particular, the amendments clarify the requirements for transactions using the true daily earnings method.

An amendment to subsection (a) of §84.203 clarifies the definition of "deferment charge" to remove the phrase "the payment of an additional." The adoption removes a sentence from subsection (a) to conform to amendments to subsection (d)(3).

Regarding §84.203(a), the official AFSA comment states that "the proposed amendments to the definition do not adequately identify what constitutes a deferment." The current rule text, which this adoption does not change, states that a

deferment charge is a "charge to defer the payment date of a scheduled payment or partial payment on a contract. . . . This section applies only to an amendment relating to the deferment of all or part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract." The commission believes that this text is sufficient to specify what constitutes a deferment. For this reason, the commission declines to provide further modifications to the rule in response to the commenter's suggestion.

In the amendments to subsection (b), the rule's former requirement to provide a deferment notice to the buyer has been replaced with a requirement to provide the buyer with a copy of the written deferment agreement. Paragraph (1) describes the elements that must be included in the deferment agreement. These requirements are based on Texas Finance Code, §348.116, which provides that an amendment to a retail installment contract must be confirmed in a writing signed by the buyer, and that the holder must deliver a copy of the confirmation to the buyer. Regarding the requirement to have a signed deferment agreement, one precommenter asked whether the agency would continue to follow a policy that the commission articulated in the 2008 preamble to the original adoption of §84.203. In that preamble, the commission stated: "There are certain fact situations where a signature would not be required. For example, if the holder does not change the payment amount and does not impose a charge for the deferment." 33 TexReg 8915 (2008). The agency will continue to follow this policy after the adoption of these amendments.

The adoption deletes current subsection (c), which deals with the content of the deferment notice, because the adoption replaces this provision with a requirement to provide a deferment agreement containing similar information in subsection (b). Subsection (d) of the adoption amends the guidelines for computing the deferment charge in order to provide additional clarity. For example, amendments to paragraphs (1)(A)(i)(II) and (2)(A)(i)(II) specify that the holder may charge a deferment charge that is lower than the maximum. Also, amendments to paragraphs (1)(D) and (2)(D) describe requirements for the application of payments. New paragraph (3) describes how the deferment charge should be calculated for a transaction using the true daily earnings method. This provision explains that all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge.

The official AFSA comment states that "the proposed amendments to the definition do not adequately identify . . . whether a finance charge will now be considered a deferment charge for the purposes of the new rules. Accordingly, AFSA requests clarification on the treatment of the finance charge on a deferred payment as a deferment charge." Licensees may use three different methods for calculating time price differential (i.e., finance charge): the add-on method, the scheduled installment earnings method, and the true daily earnings method. In response to this comment, new paragraphs (1)(E) and (2)(E) have been added to subsection (d), explaining that for contracts using the add-on method or scheduled installment earnings method, the deferment charge does not include time price differential. As proposed, paragraph (3)(D) already described the portion of the

time price differential that is included in the deferment charge for contracts using the true daily earnings method.

The adoption deletes current subsections (f) and (g), dealing with accrual of time price differential and accounting of payments, because the adoption replaces these provisions with amended provisions in subsection (d). The adoption adds a new subsection (f) explaining that a holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only \$25" if the total deferment charge exceeds \$25.

The official AFSA comment states: "AFSA also requests additional guidance from the OCCC regarding calculation of the deferment charge in order to provide financial institutions with greater clarity." The commission believes that the rule provides sufficient guidance on how holders can charge a deferment charge in compliance with Texas Finance Code, §348.114. For this reason, the commission declines to add further guidance in the text of the rule. If further guidance is necessary, the OCCC may issue an advisory bulletin on this issue.

The official AFSA comment states: "Additionally, AFSA respectfully requests that the OCCC consider the potential negative impact of the proposed deferment charge restrictions on creditors and consumers. Deferments are available to consumers at the discretion of creditors; accordingly, creditors may opt to discontinue the practice if the proposed rules create an excessive administrative burden. Without available deferments, the end result for consumers may be accelerated remedial

action." The commission is unaware of how the amendments would create a negative impact on creditors or consumers. The amendments will result only in minor changes (if any) to how holders presently impose deferment charges, compared to the previous version of the rule. Any changes are necessary to ensure that holders comply with Texas Finance Code, §348.114.

II. Documentary fees

Section 84.205, which relates to documentary fees, has been repealed and replaced with a new rule. The previous version of §84.205 described the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and described the criteria that the Office of Consumer Credit Commissioner (OCCC) uses to determine whether a documentary fee is reasonable. The new rule largely maintains the former rule's requirements, but it includes new provisions relating mainly to three issues. First, it raises the documentary fee amount that does not require a cost analysis from \$125 to \$150. Second, it codifies several concepts that the OCCC has used in accepting notifications of documentary fees and in reviewing cost analyses. Third, it specifies the format of the cost analysis, in order to help streamline the OCCC's process of reviewing documentary fees.

Subsection (a) describes the purpose of the new section, including a reference to the documentary fee provisions of Texas Finance Code, §348.006. Subsection (b) describes the rule's general requirements, explaining that: (1) for a documentary fee of \$50 or less, no notification or cost analysis is required; (2) for a documentary fee over \$50, up to \$150, a notification is required,

but a cost analysis is not required; and (3) for a documentary fee over \$150, both a notification and a cost analysis are required. The current documentary fee rule at §84.205(e)(3) allows a seller to file a documentary fee up to \$125 without providing a cost analysis. The commission adopted the original rule with the \$125 amount in 2010. The agency believes that this is an appropriate time to revisit the \$125 amount and increase it to \$150, primarily for two reasons. First, the agency's ongoing review of documentary fee cost analyses has indicated that a large portion of sellers can support a fee of \$150 as being reasonable. Second, since 2010, several document-related costs for Texas motor vehicle dealerships have increased. Based on these factors, as well as a comparison of maximum documentary fee amounts in other states, the OCCC believes that \$150 is an appropriate amount that sellers can file without providing a supporting cost analysis.

Subsection (c) describes the requirements for the written notification that sellers must provide to the OCCC before charging a documentary fee greater than \$50. Paragraph (2) explains that a seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. Paragraph (3) explains that the notification must be provided on a form prescribed by the OCCC.

One precommenter expressed concern that a separate submission would be required for each licensed location or registered office. The current procedure for submitting documentary fee notifications already allows sellers to submit a single spreadsheet listing multiple locations. As the OCCC develops an updated form for providing the notification, the agency will be mindful of this concern.

The official TADA comment states: "At the February 3, 2016 meeting, TADA discussed its concern regarding mandating that a specific form be required when notifying the agency of a documentary fee amount." The commenter concludes with the following: "Although a prescribed form for notification is useful, the mandating of a prescribed form is not included in the statute and TADA requests that the proposal be modified so that notification 'may' be on a prescribed form."

The OCCC believes that a standardized form is appropriate and necessary to ensure that filings are correctly processed, and to enable the agency to comply with its statutory responsibility under Texas Finance Code, §348.006 to accept documentary fee notifications. As the Texas Supreme Court stated, "[w]hen a statute expressly authorizes an agency to regulate an industry, it implies the authority to promulgate rules and regulations necessary to accomplish that purpose." *Pruett v. Harris Cty. Bail Bond Bd.*, 249 S.W.3d 447, 453 (Tex. 2008).

The OCCC already directs sellers to submit standardized documentary fee filings online. The OCCC's upcoming system for online documentary fee submissions will be more streamlined. It will allow a licensee to make a documentary fee filing by logging in and providing the following information: (1) the amount of the documentary fee, (2) a contact name, (2) a contact e-mail address, (3) a contact phone number, and (4) the implementation date. The new system will offer direct and immediate feedback to sellers. It will be a superior method for sellers to submit documentary fee notifications. Without a standardized process for submitting notifications, dealers and the agency run a great risk of not being

able to demonstrate compliance with the statute.

If a seller sends a written notification to the OCCC on an improper form and makes a bona fide effort to communicate its documentary fee amount to the OCCC, the OCCC can exercise its discretion and determine whether the attempted communication constitutes the equivalent of a filing. Thus, the commission declines to adopt the commenter's suggestion and maintains §84.205(c)(3) as proposed.

Paragraph (4) describes the requirements for filing a documentary fee notice upon a transfer of ownership between businesses. The new rule requires the transferee to file a documentary fee notification no later than the 30th calendar day following the transfer of ownership if it intends to charge a documentary fee greater than \$50. Regarding this requirement, one precommenter stated: "[W]e have seen a number of sophisticated dealership operators simply forget about the documentary fee notice when applying for a transfer or new MVSF because they believed that the ALECS application system was comprehensive. . . . We would recommend including in 84.205(c)(4) a requirement that the OCCC include in the application for a MVSF license a section to provide notice of a documentary fee increase." As the OCCC amends its internal processes and the content of its online license applications, the agency will ensure that the Chapter 348 license application includes a reminder to file a documentary fee notification if the applicant intends to charge a documentary fee over \$50. The agency believes that this reminder in the license application will address the precommenter's concern, and that additional language on this issue in paragraph (4) is unnecessary.

Paragraphs (6) and (7) describe the OCCC's authority to order restitution or order the seller to lower its documentary fee if the seller fails to provide a written notification. In particular, paragraph (6)(B) explains that the OCCC may order the seller to lower its documentary fee prospectively. One precommenter asked for the phrase "for a specified period of time" to be added to the end of this provision. While a specified period might be appropriate in some situations, it might not be appropriate in others. For example, if a seller filed a \$100 documentary fee and charged \$150, then the OCCC might order the seller to cease charging a documentary fee greater than \$100. Depending on the circumstances of the violation, it might not be feasible for the order to state a specified period of time (e.g., six months). For this reason, the adoption does not include this suggested phrase.

One precommenter asked whether the OCCC would continue entering agreed orders for administrative penalties as an alternative to restitution for failure to provide a documentary fee notification. Along the same lines, one precommenter stated: "We would also recommend that the OCCC be limited to an administrative penalty upon the finding that a dealer increased the documentary fee to the safe harbor amount without providing notice to the agency and limiting the restitution amount to the difference between the fee charged in excess of safe harbor amount of \$150. Requiring dealerships to make restitution of up to \$100 per customer for simply failing to send a single email to the OCCC is an unnecessarily harsh and punitive measure for a mere administrative violation. For many dealerships, such a restitution order could result in layoffs or the closure of the dealership for nothing more than inadvertence."

In addition, the official TADA comment observes the following regarding restitution: "the potential penalty is substantial for a failure to provide notice, i.e., restitution and an order to lower the documentary fee." (footnote omitted).

The commission believes that the rule's restitution provisions are appropriate. In certain cases where sellers failed to provide a documentary fee notification, the OCCC has entered agreed orders in which the OCCC and the seller agreed that the seller would pay an administrative penalty as an alternative to restitution. Typically, these have been cases where the seller charged a documentary fee of \$125 or less, and providing restitution down to \$50 would have imposed a substantial financial hardship on the seller. Under Texas Finance Code, §14.252(c), in determining the amount of an administrative penalty, the OCCC can consider the seriousness and nature of the violation, the extent of harm to third parties, and the amount necessary to deter future violations, among other factors. The adopted rule text does not affect the agency's ability to enter agreed orders for administrative penalties within the agency's discretion. Because agreed orders are voluntarily agreed to by both sides, the agency believes that it is not necessary for the rule to describe the agreed order process.

The rule's restitution provisions are consistent with the authority to order restitution under Texas Finance Code, §14.251(b). The agency believes that the rule should specify this authority for cases where restitution is appropriate.

Subsection (d) describes the requirements for the cost analysis that sellers must provide to the OCCC before charging a documentary fee greater than \$150.

Paragraph (1) explains that the seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by documentation. This is similar to §84.205(e)(3) of the current rule, which states: "A retail seller has the burden of showing that all included costs are specified and supported by adequate documentation." One precommenter stated: "The new regulation should place the burden on the OCCC to demonstrate by specific cost elements how the agency determined that the requested documentary fee was too high." The agency disagrees with this statement. It is appropriate for the rule to place the burden on the seller, because the seller is in the best position to support the reasonableness of its documentary fee through specific documentation of its costs and processes. Placing the burden on the seller is also appropriate because Texas Finance Code, §348.006 prohibits sellers from charging an unreasonable documentary fee, and requires sellers to initiate the review process by providing a notification to the OCCC.

Paragraph (2) summarizes the five main reasonableness requirements for costs to be included in the documentary fee: (1) costs must be directly related to the preparation and processing of documents; (2) costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales; (3) costs must comply with the prudent-business-person standard; (4) costs must comply with timing requirements, and must be incurred concurrently with or after the seller's preparation of a sales contract, and before title is transferred; and (5) the documentary fee may not include any finance charge, and any costs included in the documentary fee must be incurred uniformly in cash and credit transactions.

One precommenter disagreed with both parts of the timing requirement. Regarding the requirement that costs be incurred with or after the preparation of a sales contract, the precommenter stated: "[M]ost dealerships will collect a customer's personal information and identification before a test drive and begin working on verifying personal information for Red Flags/OFACs compliance." It is true that sellers incur a small amount of document-related costs before the negotiation or preparation of any sales contract. However, the agency believes that this concern is adequately addressed by paragraphs (2)(D)(i) and (3)(B)(ii)(V), which would allow the seller to include the cost of printing a copy of the buyer's driver's license to verify the buyer's identity, notwithstanding the timing requirement. The precommenter also stated: "Limiting costs to be incurred at the *earlier* of the time when title is actually transferred or legally required to be transferred is inconsistent with the Texas Department of [Motor] Vehicle's regulations allowing a dealership to transfer title after the deadline when there is good cause for a delay (i.e. out of state title issues, lien holder delays, etc.)." The agency disagrees with the contention that the timing requirement is inconsistent with TxDMV's rules. The general deadlines for transferring motor vehicle titles are provided in Texas Transportation Code, §501.0234, and TxDMV's rule at 10 TAC §215.144. As provided by Section 501.0234(f), a seller does not violate a titling deadline "during the time the seller is making a good faith effort to comply." For purposes of the documentary fee rule at paragraph (2)(D)(ii), the seller could include costs incurred while the seller is making a good-faith effort to comply with the deadline, as provided by Section 501.0234(f). In other words, the documentary fee rule is entirely consistent

with the good-faith provision in Section 501.0234(f). In any case, the agency anticipates that this good-faith provision would have little effect on a final documentary fee cost analysis, because sellers generally transfer titles before the deadlines described in TxDMV's rule. For this reason, the agency believes that the adopted timing requirement is appropriate.

Paragraph (2)(D)(i) includes a change from the proposal to specify that the first part of the timing requirement does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

Paragraph (6)(F) describes several prohibited categories of costs that may not be included in the documentary fee, including advertising costs, floor planning costs, a salesperson's commission, and costs for the disbursement of money. Regarding the provision on disbursement of money, one precommenter noted that sellers might incur costs to send a required payment to a governmental entity. In response to this precomment, paragraph (6)(F)(v) specifies that it refers to the disbursement of money to a financial institution. This would, for example, prohibit sellers from including the cost of sending a certified check to pay off a trade-in vehicle in the documentary fee.

Paragraph (3) describes the form of the cost analysis for a documentary fee over \$150. The cost analysis includes a summary of documentary fee costs and supporting exhibits. The summary consists of an itemization of costs in the following six categories: (1) personnel; (2) forms and printing; (3) postage; (4) software; (5) facilities costs; and (6) other costs.

Paragraph (3)(B)(i) describes the supporting exhibit for personnel, which must include job descriptions on a task level, salaries, and a complete description of how compensation is calculated for each included position. The rule explains that commission paid to a salesperson for the sale of a motor vehicle must be excluded. This is substantially similar to the requirement that appears in the current rule at §84.205(d)(4). Several precommenters expressed concern about this requirement, arguing that it could be read to totally prohibit a salesperson's compensation from being included in the documentary fee.

The TADA official comment expresses similar concerns regarding allowable compensation, stating that "commission employees should not be reduced to their base salary, i.e., minimum wage, in the cost analysis. Again, this reduction is not an accurate or true reflection of a dealership's costs. The percentage of an employee's time that is required to perform the handling of documents times compensation should be the formula incorporated in the dealership's cost analysis, not a minimum wage formula."

In order to clarify the requirement to exclude a salesperson's commission, the following sentence has been added to paragraph (3)(B)(i)(II): "If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission." The commission disagrees with the commenter's suggestion that the rule will require all commission employees to be reduced to their base salary. Paragraph (3)(B)(i)(II) distinguishes between salespersons and other employees. For salespersons, the documentary fee may not include commission, because the work for

which a salesperson receives commission-based compensation is not directly related to the processing of documents. For other employees, commission may be included if it complies with the rule's other requirements.

Paragraph (3)(B)(ii) describes the supporting exhibit for forms and printing. The paragraph includes a list of specific documents for which the seller may include costs, including the written contract for the sale of the motor vehicle, the application for certificate of title, the privacy notice, the Texas Lemon Law disclosure, the buyer's temporary tag, the window sticker (for new vehicles), and the used car buyers guide (for used vehicles). Paragraph (3)(B)(iii) describes the supporting exhibit for postage. Paragraph (3)(B)(iv) describes the supporting exhibit for software.

Paragraph (3)(B)(v) describes the supporting exhibit for facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance), and any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements. The exhibit must describe an appropriate methodology for ensuring that the documentary fee includes only the portion of facilities costs corresponding to the percentage of time and space used for activities that may be included in the documentary fee. As an example, if a dealership is open 10 hours per day, 6 days a week, then one appropriate method to calculate includable facilities costs would be: (1) determining hourly fixed costs, which are the total fixed costs for one year divided by the total number of hours in a year ($365 \text{ days/year} \times 24 \text{ hours/day} = 8,760 \text{ total hours/year}$); (2) multiplying the result of (1) by 3,120 hours, which is the

dealership's number of business hours in a year (52 weeks/year \times 6 days/week \times 10 business hours/day); (3) multiplying the result of (2) by the percentage of space used for includable activities (calculated on a square-footage basis); and (4) multiplying the result of (3) by the percentage of business time spent on includable activities in each space. This amount might vary among spaces, requiring the seller to calculate separate includable costs for each space. For example, if the title clerks spend 75% of their time on includable activities, and if the title clerks' office space is occupied during 90% of business hours, then the percentage of business time spent on includable activities in the title clerks' office space would be 67.5% (75% \times 90%).

One precommenter expressed concern about this methodology, arguing that it would not enable sellers to recoup costs that arise during hours while the dealership is closed. The precommenter argued that, for example, if a section of the facilities is used entirely for document processing and is used throughout standard business hours, then 100% of the costs of that section of the facilities should be includable in the documentary fee. Similarly, one precommenter stated: "If a clerk's office is empty for an hour at the beginning of the day and an hour during lunch, the dealership does not reduce its cost by that much."

The TADA official comment echoes these concerns: "The cost analysis for a facility should not be reduced if the facility is not open 24 hours a day and 7 days a week. This proposed reduction is not an accurate analysis of the true cost incurred and thus the cost analysis will not be accurate under this proposed formula."

The commission agrees that dealerships incur costs while closed, but these costs do not directly relate to processing documents. The documentary fee should only include costs that are directly related to processing documents. Overhead costs that are not directly related to processing documents should be included elsewhere, either in the cash price (for general costs) or the time price differential (for costs specific to credit transactions). The agency has allowed a portion of facilities costs to be included in the documentary fee, to recognize the fact that some facilities are necessary to process documents. The alternative would be to prohibit facilities costs altogether. The portion of facilities costs directly related to document processing is, by its nature, very narrow. It is true that a dealership incurs costs, for example, to keep electricity running during non-business hours, or to pay rent on space while employees are on break. However, these are indirect overhead expenses that are not directly related to processing documents. This type of cost should be included in the dealer's cost of goods sold, and covered by the cash price or the time price differential, rather than the separate and additional consideration of the documentary fee. Thus, for these reasons the commission maintains §84.205(d)(3)(B)(v) with respect to allowable facilities costs.

Paragraph (3)(B)(v) also explains that the documentary fee may not include any depreciation of facilities costs. The official TADA comment states that "depreciation should be allowed in the cost analysis as the dealership should be allowed to recoup its allocable cost attributable to the facility--the same as rent is an allowable cost." Depreciation is an indirect expense, rather than a cost actually paid by a seller to process documents. Depreciation is a non-cash expense with an income tax benefit,

and it is used as a tool for orderly accounting. Because it is a non-cash expense, depreciation is more indirectly related to processing documents than rent. The relationship between depreciation and the seller's actual costs could vary considerably depending on the method of depreciation. If depreciation were allowed, this could cause facilities costs to reflect a disproportionate amount of the documentary fee. For this reason, the commission believes that it is appropriate for the rule to exclude depreciation of facilities costs and hence, §84.205(d)(3)(B)(v) is maintained for this adoption.

Regarding facilities costs, one precommenter stated: "Dealerships should also be allowed to include a percentage of the common areas, bathrooms and break rooms. Dealerships are required by law to have bathrooms and break rooms for employees and customers." The agency disagrees with the argument regarding bathrooms and break rooms. The cost of maintaining bathrooms and break rooms is another indirect overhead expense that does not directly relate to the processing of documents. It should be included in the cash price of the motor vehicle.

Paragraph (3)(B)(vi) describes the supporting exhibit for other costs. Paragraph (4) describes the requirements for a cost analysis covering multiple locations, and allows sellers to submit a single cost analysis covering more than one licensed location or registered office if the cost structures of all locations are substantially similar. Paragraph (5) explains that the OCCC will review each cost analysis to determine whether it is reasonable.

Paragraph (6) describes the OCCC's authority to order restitution if the seller

charges a documentary fee over \$150 or if the documentary fee includes costs that are not reasonable. One precommenter stated: "[W]e believe that the new regulations should *not* allow a dealer to raise the documentary fee above the safe harbor or the current fee if the fee is above the safe harbor until the OCCC has approved the increase. The restitution order can be crippling for a dealership and may not even result in a refund to customers if the dealership goes out of business. Setting aside a reserve to cover a restitution order is too disruptive to dealership business." The agency disagrees with this precomment for three reasons. First, this prohibition would be inconsistent with Texas Finance Code, §348.006(g)(2), which provides: "This section does not . . . require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee." Second, the OCCC believes that setting up a reserve account for the portion of all documentary fees above \$150 is a prudent practice, and several sellers have set up this type of account for documentary fees over \$125. Third, if a reserve account is impractical for a seller, the seller could simply refrain from charging a documentary fee over \$150 until it receives a statement from the OCCC that its documentary fee has been determined reasonable.

Paragraph (6) includes a change from the proposal to specify that the method of calculating restitution applies for each buyer.

III. Debt cancellation agreements

The adoption includes new §84.309, relating to debt cancellation agreements that require the buyer to maintain insurance. These agreements must be submitted for

approval to the OCCC, and the OCCC has 45 days to approve or deny an agreement as provided by Texas Finance Code, §348.604. The denial of a debt cancellation agreement may be appealed to the commission, as provided by Texas Finance Code, §348.604(e). In general, the purpose of the amendments is to describe the process for submitting the agreements and the procedure for appealing a denial of an agreement.

Subsection (a) describes the purpose and scope of the rule. Subsection (b) explains that an agreement must be submitted in accordance with the OCCC's instructions.

Subsection (c) provides a general \$250 fee for submitting a debt cancellation agreement. Since the Finance Code's debt cancellation agreement submission requirements went into effect in 2011, each submitted agreement has been reviewed by an OCCC attorney and an OCCC review examiner. The employees review each agreement to make sure that it includes all elements required by Texas Finance Code, §348.602 and §348.603, and that the agreement does not contain inconsistent or misleading provisions. If the agreement cannot be approved as submitted, the employees will draft a letter that explains how the agreement must be amended and provides the submitter an opportunity to amend the form before it is denied. While it would be within the OCCC's authority to deny an agreement without sending a follow-up letter, the agency believes that these letters are an important tool to help companies submit an approvable version of the agreement before the 45-day deadline, conserving resources that would be spent on a denial and subsequent resubmission. The \$250 amount is based on the average time spent by OCCC employees to process the

submission, review the agreement, and draft follow-up correspondence. The adopted fee is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to "establish reasonable and necessary fees for carrying out the commissioner's powers and duties" under Chapter 348.

One precommenter expressed concern about the \$250 fee combined with the manner in which the OCCC has sent follow-up letters on debt cancellation agreements. The precommenter stated: "In theory, we do not oppose a fair fee. We certainly understand that a fee might be appropriate for new submissions due to the intensive work involved. . . . Our specific concerns involve the way the proposed rules, coupled with the internal policies and practices of OCCC, will impact the efficiency and fairness of the process." The OCCC will review its internal policies for processing debt cancellation agreements to ensure that companies have a reasonable amount of time to respond to initial follow-up correspondence.

Subsection (d) explains that the OCCC will send a notice of approval or denial within 45 days of receiving a debt cancellation agreement submission. Subsection (e) explains that the person who submitted the form can appeal a denial by serving a notice of appeal on the OCCC no later than the 30th calendar day after the date of denial. Subsection (f) explains that the appeal is a contested case under the Administrative Procedure Act (Texas Government Code, Chapter 2001). Subsection (g) explains that the administrative law judge in the contested case will issue a proposal for decision to the commission. Subsection (h) explains that the commission will issue a final order.

Subsection (i) explains that the order may be appealed to a Travis County district court. These provisions are intended to provide due process and fair procedures for appealing the denial of a debt cancellation agreement.

IV. Licensing and annual renewal statement

An adopted amendment to §84.601(7)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §84.602(1)(A)(v)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party (e.g., where the business is actually a partnership between the spouses rather than a sole proprietorship), the OCCC would be able to request additional information about the spouse under current §84.602(1)(C).

Section 84.604 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. The prior version of §84.604 described what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the

former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(5) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing motor vehicle sales finance license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §84.605, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §84.604. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Adopted amendments to §84.607 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. New §84.607(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §84.607(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

Adopted amendments to §84.610 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

An adopted amendment to §84.611(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Also in §84.611, the adoption amends subsection (e) by adding new paragraph (3), which requires licensees to file an annual renewal statement in connection with each renewal. These statements would include the dollar volume and number of retail installment contracts originated, acquired, or serviced during the preceding calendar year. The adoption specifies that this information is confidential because it is collected under the OCCC's examination authority. The adoption also includes conforming changes to paragraph (1)(C) of subsection (e).

These amendments have two main purposes. First, they would help the OCCC schedule examinations by providing information about the size of licensees, as well as scope and risk factors. Second, they would help the OCCC evaluate whether larger-volume licensees should pay a greater

portion of the fees assessed to the Chapter 348 licensee population, in light of the increased examination resources that these licensees require. The current rule at §84.611(e)(1)(C) allows the OCCC to collect a volume-based fee as part of a licensee's annual assessment. This rule was originally adopted under Texas Finance Code, §14.107(b), which authorizes the commission to adopt rules "provid[ing] that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors." However, because the OCCC cannot conduct examinations of all licensees every year, the OCCC cannot currently determine the dollar volume of retail installment contracts that a licensee originated, acquired, or serviced during a previous year. The amendments would enable the agency to collect this information.

Subsection (e)(3) contains a change from the proposal to remove a sentence that stated: "The licensee must provide the statement at the time of filing the renewal." The agency is considering allowing licensees to submit the statement shortly after renewal, particularly for the renewal cycle that will occur in summer 2016.

At the stakeholder meeting, one precommenter stated that sellers do not currently maintain information about the dollar amount of contracts that they originate. The precommenter suggested that the rule allow sellers to submit only the number of contracts, rather than the dollar volume. However, it is the OCCC's understanding that dealer software programs generally allow sellers to generate reports showing annual dollar volumes. It is also the agency's understanding that sellers need this information to correctly calculate their

revenues for income-tax purposes. Currently, the agency anticipates that the dollar volume would be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year.

Regarding the proposed new subsection (e) of §84.611, the official AFSA comment requests clarification in two areas: 1) the definition of retail installment contracts "serviced" in relation to the variable assessment fee that may be charged under §84.611(e)(1)(C); and 2) the calculation of the dollar volume of contracts.

First, the AFSA comment states that "additional information on how the OCCC defines serviced is needed. . . . [I]t is unclear if a company that retains servicing rights for the lifetime of a contract would owe variable fees one time at the origination of the contract or each year over the lifetime of the contract." The OCCC intends to address this issue as it develops instructions for submitting the annual renewal statement. Further, the AFSA comment states that "there could easily be a situation where the initial acquirer, the subsequent acquirer, and the servicer (i.e., the initial acquirer that retains servicing rights) all pay the fee, potentially all in the same year." The OCCC has not yet determined what the amount of the volume-based fee will be. Because the OCCC would examine all three entities (the seller, the holder, and the servicer), it might be appropriate for each entity to pay part of the volume-based fee, in order to ensure that the OCCC recoups its costs and each entity pays its appropriate fair share of the regulatory expenses.

Second, regarding the calculation of the dollar volume of contracts for the annual renewal statement required by

§84.611(e)(3), the AFSA comment seeks guidance on the following questions: "Is this volume based on the account balance on a specific date? Is this the date the contract was acquired? Does this include contracts that are paid off in the same year they were purchased or serviced?" As stated in the preamble of the proposal, the agency anticipates that the dollar volume will be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year. 41 TexReg 1619 (March 4, 2016). The agency intends to provide more information about specific calculation requirements as it develops the instructions for the annual renewal statement.

Adopted new §84.613 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a motor vehicle sales finance license. This section replaces former §84.613 and §84.614, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a motor vehicle sales finance licensee.

Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a motor vehicle sales finance licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection

(c)(1) includes changes from the proposal to more clearly specify the offenses that are directly related to the licensed occupation. The listed offenses now include theft, assault, and any offense that involves misrepresentation or a false or misleading statement. The listed offenses are similar to the offenses involving moral character under previous §84.613(d)(1). The agency believes that these offenses directly relate to the licensed occupation, and that they reflect negatively on an applicant's character and fitness to hold a license.

Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

V. Other technical corrections

Adopted amendments to §84.708 and §84.709 regarding recordkeeping provide updated citations to a TxDMV regulation concerning the discharge or release of a lien. The parallel amendments are contained in §84.708(e)(2)(P) and §84.709(e)(2)(H).

The adoption includes clarifying changes to §84.804, which relates to provisions required in a retail installment sales contract. A clarifying change in the first sentence of the section explains that a retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. An amendment to paragraph (4) explains that the itemized charges may include other charges authorized under Chapter 348. The rule adds a new provision at paragraph (4)(Q) explaining that the itemized charges may include a charge for an automobile club membership. This is based on a 2013 amendment to Texas Finance Code, §348.005(4), authorizing a seller to include a charge for an automobile club in the itemized charges of a retail installment sales contract.

The adoption includes clarifying changes to §84.804 relating to model plain-language contract clauses for Chapter 348 transactions. In paragraph (16)(C)(i)(II), text has been added to clarify that a model clause should be used for scheduled installment earnings transactions where the seller discloses the annual percentage rate using a method other than a 365/365 basis. In paragraph (20), an amendment specifies that a model clause refers to contracts using either the sum of the periodic balances method or the scheduled installment earnings method. In paragraph (20)(B)(ii), the model refunding clause for contracts

using the scheduled installment earnings method is amended for clarity, and the rule text is amended to specify that this clause should be used if sales tax is advanced. In addition, new paragraph (20)(B)(iii) provides a new model clause for scheduled installment earnings contracts with deferred sales tax. Conforming changes are contained in the model retail installment sales contract for Chapter 348 transactions at figure 7 TAC §84.809(b).

The AFSA comment states: "AFSA requests consideration of an amendment to the model retail installment sales contract form to include lines for both 'Cash to buyer' and 'Payoff by seller' on the itemized list under 'Gross Trade-in' in the 'Downpayment' section of the standard form." The model contract at figure 7 TAC §84.809(b) already contains a line labeled "payoff by Seller," which is under "Gross trade-in" in the downpayment section of the itemization of amount financed. The commission believes that it would be inappropriate to add a "Cash to buyer" line, because sellers are generally prohibited from paying cash to buyers under Texas Finance Code, §348.403. Accordingly, the commission declines to adopt this suggestion.

IV. Documentary fee rule delayed effective date

New §84.205 and the repeal of previous §84.205, regarding documentary fees, will have a delayed effective date of June 1, 2016. The purpose of the delay is to allow time to incorporate electronic documentary fee submission into the agency's online system. The agency anticipates that the updated system for submitting documentary fees will be available to licensees by June 1.

V. Statutory authority

All of the amendments, new rules, and repeals are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are adopted under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006. Within §84.205, the restitution provisions are adopted under Texas Finance Code, §14.251(b), which authorizes the commissioner to order restitution to an identifiable person injured by a violation of Title 4.

The adopted fee in §84.309(c) and the adopted amendments to §84.611(e) are authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapter 348.

Chapter 84. Motor Vehicle Installment Sales

§84.102. Definitions.

The following words and terms, when used in this chapter, will have the following

meanings, unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Deferment charge--~~A~~ [The payment of an additional] charge to defer the payment date of a scheduled payment on a contract.

(9) - (23) (No change.)

§84.201. Time Price Differential.

(a) - (c) (No change.)

(d) Method of calculation.

(1) Regular payment contract using sum of the periodic balances method. The time price differential charge is computed using the add-on rates authorized by Texas Finance Code, §348.104 or the alternative time price differential rate authorized by Texas Finance Code, §348.105 converted to an equivalent add-on rate per \$100 per annum.

(A) Base time price differential charge. The base time price differential charge is determined by multiplying the principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title (regarding Definitions), by the applicable add-on rate per \$100 per year for the corresponding term of the contract. If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than \$100, the amount of the time price differential charge is decreased or increased proportionately.

(B) - (D) (No change.)

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable maximum daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title, as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal subject to a finance charge. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(22) [~~§84.102(21)~~] of this title.

(B) Maximum annualized daily rate.

(i) -(ii) (No change.)

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per \$100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If

the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.

Figure: 7 TAC §84.201(d)(2)(B)(iii) *{{See attached amendments.}}*

(iv) (No change.)

(C) - (D) (No change.)

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(22) [~~§84.102(21)~~] of this title. The earned time price differential charge is computed as follows:

(i) - (ii) (No change.)

(B) - (E) (No change.)

§84.203. Deferment Charge.

(a) Definition. A "deferment charge" means a [~~the payment of an additional~~] charge to defer the payment date of a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed

add-on method for regular payment contracts using the sum of the periodic balances, the scheduled installment earnings method, or the true daily earnings method. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. ~~[The term "deferment charge" does not include the continuing accrual of finance charge at the contract rate already agreed upon in a retail installment sales contract employing the true daily earnings method.]~~ The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) Written deferment agreement.
~~[Bilateral or mutual deferment.]~~

(1) General requirements. A retail buyer and a holder may mutually agree to defer all or a part of one or more scheduled installments. A deferment agreement must be in writing and must be noted in the account record at the time the deferment is made. The written deferment agreement must include all of the following:

- (A) the name of the holder;
- (B) the name of the retail buyer;
- (C) the account number of the retail buyer;
- (D) the date of the deferment;
- (E) the installment or installments being deferred;

(F) the deferment period;

(G) the total amount of any deferment charge and any authorized additional deferment cost;

(H) the date and amount of the next installment due; and

(I) any other conditions of deferment.

(2) Signature and delivery. A deferment agreement is an amendment to the retail installment sales contract that must be confirmed in a writing signed by the retail buyer and delivered to the retail buyer, as provided by Texas Finance Code, §348.116. ~~[Bilateral or mutual deferments must be agreed upon in writing as required by Texas Finance Code, §348.116.]~~ The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer.

(3) ~~(2)~~ Disaster exception. A holder must deliver the deferment agreement to the retail buyer, but is not required to obtain the retail buyer's signature, if the following conditions are met:

(A) The retail buyer resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(B) The deferment occurs before the state of disaster has been terminated:

- (i) by executive order; or

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(ii) by expiration as described in Texas Government Code, §418.014(c).

~~[(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the retail buyer as required by Texas Finance Code, §348.116. A deferment notice must include the name of the holder, the name of the retail buyer, the account number of the retail buyer, the date of the deferment, the installment or installments being deferred, the deferment period, the total amount of any deferment charge and any authorized additional deferment cost, and the date and amount of the next installment due.]~~

(c) ~~[(d)]~~ Limitation of number of installments being deferred per amendment. A holder may only defer the equivalent of three monthly installments per amendment. This limitation applies to the number of whole or partial installments that can be deferred, not the length of time an installment can be deferred.

(d) ~~[(e)]~~ Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) Regular payment contract using sum of the periodic balances method.

(A) Base deferment charge. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances,

a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either:

(I) the maximum effective rate authorized for a regular payment contract for the monthly term [the contract]; or

(II) a lower rate agreed to by the parties;

(ii) dividing the results of clause (i) of this subparagraph by 12; and

(iii) multiplying the results of clause (ii) of this subparagraph by the number of months the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph [section] is \$1.00.

(D) Application of payments. For a regular payment contract employing

the add-on method and the refunding method of the sum of the periodic balances, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract.

(E) Time price differential not included. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, the deferment charge does not include time price differential agreed upon in the retail installment sales contract.

(2) Scheduled installment earnings method [~~or true daily earnings method~~].

(A) Base deferment charge. For a regular or an irregular payment contract employing the scheduled installment earnings method [~~or true daily earnings method~~], a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the

actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph [~~section~~] is \$1.00.

(D) Application of payments. For a contract using the scheduled installment earnings method, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, any difference that exceeds \$3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.

(E) Time price differential not included. For a contract using the scheduled installment earnings method, the deferment charge does not include time price differential agreed upon in the retail installment sales contract.

(3) True daily earnings method.

(A) Base deferment charge. For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is \$1.00.

(D) Accrual of time price differential. For a contract using the true daily earnings method, all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.

~~[(f) Negative accrual of time price differential. In a retail installment sales contract employing the true daily earnings method, the payments scheduled for the period following the deferral (including the deferred payments) must be sufficient to:]~~

~~[(1) pay the time price differential remaining on the deferred payment or payments and the amount currently accruing after the period of deferral; or]~~

~~[(2) be applied in another manner that is more favorable to the retail buyer than the method provided in paragraph (1) of this subsection.]~~

~~[(g) Accounting of payment. If a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, in a~~

~~precomputed retail installment sales contract employing the scheduled installment earnings method, any difference that exceeds \$3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.]~~

(e) ~~[(h)]~~ Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the retail buyer. In the event deferment fees are refunded to the retail buyer, no rescheduling of the retail installment sales contract is permitted.

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only \$25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds \$25. If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

§84.205. Documentary Fee. {{This section replaces former section 84.205, which has been repealed.}}

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$50, the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness.

This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$50 or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$50 or less.

(2) Over \$50, up to \$150. Before charging a documentary fee greater than \$50, but less than or equal to \$150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of \$150 or less to be reasonable.

(3) Over \$150. Before charging a documentary fee greater than \$150, a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$50, a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) Notification for each location. A seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. If a seller has more than one license or registered office in the same physical space, then it must provide a notification for each license or registered office under which it sells vehicles. For example, if a seller has two registered offices at the same location and does business under the names of both

registered offices, then it must provide a notification for each of the two registered offices.

(3) Form. The notification must be provided on a form prescribed by the OCCC for receiving notifications of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$50, then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$50. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$50 until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$50 without first providing a complete notification to the OCCC; or

(B) provides a notification to the OCCC and charges a documentary fee greater than the amount described in the notification.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

(A) provide restitution to affected buyers;

(B) lower its documentary fee prospectively;

(C) provide a complete, accurate notification to the OCCC;

(D) cease charging a documentary fee greater than \$50 for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$50 (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) Generally. Before charging a documentary fee greater than \$150, a seller must submit a cost analysis showing that the documentary fee is reasonable. The seller

has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. This subsection does not require the OCCC's approval of a documentary fee before a seller charges it. However, the OCCC may order restitution under subsection (d)(6) if a seller charges a documentary fee over \$150 that is not supported by a complete cost analysis, or if the documentary fee includes costs that are not reasonable.

(2) Reasonableness requirements.

In order to be reasonable, a documentary fee must reflect costs actually incurred by the seller in preparing and processing documents for a motor vehicle sale. All included costs must comply with the following reasonableness requirements.

(A) Directly related and allocable. Costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. Costs must be allocable (i.e., chargeable or assignable) to the objective of preparing and processing documents. Costs must be incurred by the seller. A seller may not increase any authorized charge imposed by a third party.

(B) Allowable. Costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales. Costs related to ancillary or optional products may not be included. Costs must be determined in accordance with generally accepted accounting principles.

(C) Prudent business person. Costs must comply with the prudent-business-person standard. This means that costs are limited to what a prudent business

person would pay in a competitive marketplace. For example, hiring a limousine to deliver documents does not comply with the prudent-business-person standard. In determining whether a given cost is prudent, consideration will be given to the following:

(i) whether the cost is of a type generally recognized as ordinary, customary, and necessary for preparing and processing documents for a motor vehicle sale;

(ii) the restraints or requirements imposed by sound business practices, arm's-length bargaining, and applicable laws and regulations;

(iii) market prices for comparable goods or services; and

(iv) the necessity of the cost.

(D) Timing.

(i) Costs must be incurred either concurrently with or after the seller's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract. Any costs incurred before the preparation of the earliest of these documents may not be included. This clause does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

(ii) Costs must be incurred before the title of the purchased motor vehicle is actually transferred, or when title is legally required to have been transferred, whichever is earlier.

(iii) Costs relating to a trade-in motor vehicle must be incurred before the title of the trade-in motor vehicle is actually transferred, or when the title is legally required to have been transferred, whichever is earlier.

(E) No finance charge. The documentary fee may not include any amount that would be considered a finance charge under the Truth in Lending Act, 15 U.S.C. §§1601-1667f. All included costs must be incurred uniformly in cash and credit transactions.

(i) The documentary fee may not include any cost associated with the negotiation or assignment of the retail installment sales contract to another financial institution or a related finance company.

(ii) The documentary fee may not include any cost associated with the evaluation of the buyer's creditworthiness. A seller may include the cost of obtaining a credit report, if the seller incurs this cost in a substantial number of transactions where credit is not extended, and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(1)(2)(C)).

(iii) The documentary fee may not include the cost of preparing any disclosure or contractual provision that is used only in credit transactions. In particular, the documentary fee may not include the cost of preparing a Truth in Lending disclosure statement.

(F) Other prohibitions. The documentary fee may not include costs associated with any of the following:

(i) advertising;

(ii) floor planning (i.e., the seller's credit arrangements for the purchase of its inventory);

(iii) manufacturer or distributor's rebates;

(iv) the price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) the disbursement of money to a financial institution (e.g., the cost of issuing a certified check);

(vi) a salesperson's commission for the sale of the motor vehicle (but commissions for an employee other than a salesperson may be included if they comply with subsection (d)(3)(B)(i)).

(3) Form of cost analysis. The cost analysis must include a summary of documentary fee costs and supporting exhibits.

(A) Summary of documentary fee costs. The summary of documentary fee costs must be provided on a form prescribed by the OCCC.

(i) The summary must include an itemization of the amount of costs for each of the following categories:

(I) personnel;

(II) forms and printing;

(III) postage;

(IV) software;

(V) facilities costs;

(VI) other costs.

(ii) The summary must include the number of sales completed during the period used to determine the costs described in clause (i).

(B) Supporting exhibits. A seller must provide a supporting exhibit for each category of costs included in the documentary fee. A seller must prorate costs to ensure that costs that are impermissible under this subsection are excluded. If a category is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included. The OCCC may prescribe a form for the supporting exhibits. A seller is not required to provide an exhibit for any category that does not include any costs.

(i) Personnel. The supporting exhibit for personnel must describe how all employee salaries included in the documentary fee comply with the reasonableness requirements described in this subsection.

(I) The supporting exhibit for personnel must include a job description for each position. Job descriptions must be specific enough to illustrate which functions are unique to each listed position, on a task level. The job description must identify which specific tasks are included as a cost component of the documentary fee, and which are excluded.

(II) The supporting exhibit for personnel must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan).

(-a-) Commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs. If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(-b-) If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions). If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(III) If costs of training employees are included, then the supporting exhibit must include an agenda for the training and an explanation of the subject matter of the training. The seller must explain how training costs have been prorated to exclude impermissible costs (e.g., costs of training employees on responsibilities that arise only in credit transactions, or that arise before preparation of a purchase agreement).

(ii) Forms and printing. The supporting exhibit for forms and

printing must describe all included costs and explain which forms are purchased or printed. All included forms must be used uniformly in cash and credit motor vehicle sales. If a seller uses a form only in certain transactions, then the seller must prorate costs by the fraction of the seller's sales in which the form is used. For example, if a form is used only for used motor vehicle sales, then a seller must prorate the cost of the form by the fraction of the seller's sales that are used motor vehicles. If a seller includes forms not listed in this clause, then the supporting exhibit must include an explanation of how the forms comply with the reasonableness requirements described in this subsection, with a citation to the law that requires the form. A seller may include the costs of the following forms:

(I) a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code §2.201, which may be in the form of a purchase agreement, buyer's order, bill of sale, or retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);

(II) an application for certificate of title, form 130-U, as required by Texas Transportation Code, §501.023;

(III) a statement of the county of title issuance, form VTR-136, as required by Texas Transportation Code, §501.023;

(IV) a privacy notice, as required by the Gramm-Leach-Bliley Act, 15 U.S.C. §6803;

(V) a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C);

(VI) a report of a cash payment over \$10,000, form 8300, as required by the USA PATRIOT Act, 31 U.S.C. §5331;

(VII) a Texas Lemon Law disclosure, as required by Texas Occupations Code, §2301.610;

(VIII) the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §245.155;

(IX) the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §245.156;

(X) a window sticker for new vehicles, as required by 15 U.S.C. §1232; and

(XI) a used car buyers guide, as required by the Federal Trade Commission's Used Motor Vehicle Rule, 16 C.F.R. §455.2.

(iii) Postage. The supporting exhibit for postage must identify the postage carrier, the types of documents that are sent by postage, and each specific postage cost. All postage costs must comply with the reasonableness requirements described in this subsection, including the prudent-business-person standard. The OCCC will presume that a prudent business person would use certified mail from the United States Postal Service or a similarly priced service. The exhibit must explain

how costs that do not comply with this subsection (e.g., costs of sending documents to other financial institutions) have been excluded.

(iv) Software. The supporting exhibit for software must identify the cost of each included piece of software. The exhibit must state the type of software used and the specific functions of the software. The exhibit must identify which specific software functions are included as a cost component of the documentary fee, and which are excluded. If the software is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(v) Facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance). Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. The documentary fee may not include any depreciation of facilities costs. The exhibit must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.

(vi) Other costs. The supporting exhibit for other costs must identify all other costs included in the documentary fee. The exhibit must state the amount of each cost and the nature of the associated activities. If the activities are associated with both permissible and impermissible costs, then a seller must

include only the permissible portion and explain the percentage of the category that is being included.

(4) Cost analysis covering multiple locations. A seller may submit a cost analysis that covers more than one licensed location or registered office if:

(A) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(B) in the supporting exhibits, the seller explains which costs are similar among the locations and explains the differences in costs among the locations.

(5) OCCC review. The OCCC will review each cost analysis in order to determine whether the documentary fee is reasonable for the seller that provided the analysis. If the cost analysis does not support the seller's documentary fee, or if the OCCC determines that any included costs are not reasonable, then the OCCC may require the seller to provide additional information, or the OCCC may determine that the amount is unreasonable. The review may result in a determination of the maximum amount of the documentary fee that a specific seller may charge.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the restitution for violating this subsection will not exceed the amount of the documentary

fee the seller charged or received, minus \$150, minus other restitution paid under subsection (c)(6)-(7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than \$50 for a specified period of time if the seller violates this subsection.

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder, as provided by Texas Finance Code, §348.601(a). Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §348.604(a). The denial of a debt cancellation agreement may be appealed to the Finance Commission of Texas, as provided by Texas Finance Code, §348.604(e). This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement to the commission.

(b) Submission. A debt cancellation agreement must be submitted in accordance with the OCCC's instructions. A submission is not effective until the agreement is submitted in accordance with the OCCC's instructions, including the fee required under subsection (c).

(c) Fee. The person submitting a debt cancellation agreement must pay a \$250 nonrefundable fee to the OCCC for each submitted agreement.

(d) OCCC's notice of approval or denial. No later than the 45th day after the

OCCC receives a debt cancellation agreement submission, the OCCC will send a notice of approval or a notice of denial to the person who submitted the agreement, as provided by Texas Finance Code, §348.604(b). The date of approval or denial is the date on which the OCCC sends the notice of approval or denial. The OCCC may deny approval of a debt cancellation agreement if the agreement excludes language required by Texas Finance Code, §348.602 and §348.603, or if it contains any inconsistent or misleading provisions.

(e) Appellant's notice of appeal. A person who submits a debt cancellation agreement and receives a notice of denial from the OCCC may appeal the denial by serving a notice of appeal on the OCCC. The appellant must serve the notice of appeal no later than the 30th calendar day after the date of denial. If a notice of appeal is not served in accordance with this subsection, then the denial becomes final and cannot be appealed.

(f) Contested case. If a person appeals the denial of a debt cancellation agreement under subsection (e), then the appeal will be a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). The burden of proof is on the appellant to show that the agreement should have been approved under Texas Finance Code, §348.604.

(g) Proposal for decision. In connection with a contested case under this section, the administrative law judge will issue a proposal for decision to the commission. The proposal for decision will include a recommendation regarding whether the

OCCC's denial of the agreement should be affirmed or reversed. The proposal for decision may include a recommendation that costs be assigned to a party, to the extent authorized by law.

(h) Commission's final order. The commission will issue a final order after review of the administrative law judge's proposal for decision. The final order will include a statement of whether the OCCC's denial of the agreement is affirmed or reversed. The final order may include an assignment of costs to a party, to the extent authorized by law.

(i) Judicial review of commission's final order. A final order of the commission under subsection (h) may be appealed to a Travis County district court, as provided by Texas Government Code, §2001.176.

§84.601. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 348, have the same meanings as defined in Chapter 348. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Principal party--An individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

(A) a proprietor holding a 100% ownership interest [~~proprietors, to include spouses with community property interest~~];

(B) - (J) (No change.)

(8) - (10) (No change.)

§84.602. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iv) (No change.)

(v) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [~~All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~]

(II) - (IX) (No change.)

(B) - (D) (No change.)

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, the [each] owner must sign.

(ii) If the applicant is a partnership, one [each] general partner must sign.

(iii) - (v) (No change.)

(F) (No change.)

(2) - (3) (No change.)

*§84.604. Transfer of License; New License Application on Transfer of Ownership. **{{This section replaces former section 84.604, which has been repealed.}}***

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) Grandparent entity--A direct owner of a parent entity.

(2) License transfer--A sale, assignment, or transfer of a license under Texas Finance Code, Chapter 348 or 353.

(3) Parent entity--A direct owner of a licensee or applicant.

(4) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(5) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §84.605 of this title (relating to Change in Form or Proportionate Ownership). The term does not include a change in ownership above the level of the grandparent entity. Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent entity or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company;

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent entity or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(6) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(7) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the

transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a license at the time of the application, then the application must include the information required for new license applications under §84.602 of this title (relating to Filing of New Application). The instructions in §84.602 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §84.602 of this title. The instructions in §84.602 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §84.602 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any

consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business under Texas Finance Code, Chapter 348 or 353, as applicable. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by

§84.608(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing motor vehicle sales finance activity under a license, the transferee is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing motor vehicle sales finance activity and before the OCCC's final approval of the license transfer.

§84.605. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the

filing of a license transfer application or a new license application on transfer of ownership pursuant to §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §84.611. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §84.611 of this title. This subsection does not apply to a legal entity that has filed with the OCCC the most recent Form 10-K or 10-

Q filing of the licensee or of the parent entity, although a license transfer application or a new license application on transfer of ownership may be required under §84.604 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer of ownership under §84.604 of this title.

(3) (No change.)

§84.607. Updating Application and Contact Information [~~Reportable Actions After Application~~].

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~;~~ ~~must be reported~~] within 14 calendar days after the person has knowledge of the [~~action, fact or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies;
or

(4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§84.610. License Status.

(a) - (c) (No change.)

(d) Expiration. A license will expire the later of July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued. For purposes of this subsection, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(e) (No change.)

§84.611. Fees.

(a) - (b) (No change.)

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record. This fee must be paid for each fingerprint record filed with an application for a new license or a license transfer.]

(d) (No change.)

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

(A) a licensed location fee not to exceed \$460;

(B) a registered office fee not to exceed \$430 per location; and

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, ~~[or]~~ acquired, or serviced during the preceding calendar year, as stated in the annual renewal statement described by paragraph (3).

(2) The maximum annual assessment for each active license will be no more than \$1,200 excluding the registered office fees.

(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide

the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.415. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.

(f) Licensed location or registered office duplicate certificates sent by mail. The fee for a duplicate certificate sent by mail is \$10.

(g) (No change.)

§84.613. Denial, Suspension, or Revocation Based on Criminal History. {{This section replaces sections 84.613 and 84.614, both of which have been repealed.}}

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §84.611 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information

on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing retail installment sales contracts under Texas Finance Code, Chapter 348 or 353, involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or

conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's

character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §348.508(3) and §353.508(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §§348.504(a), 348.508, 353.504(a), and 353.508.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record

can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (O) (No change.)

(P) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien) [~~§217.3 (relating to Motor Vehicle Certificates of Title)~~].

(Q) (No change.)

(3) - (9) (No change.)

(f) (No change.)

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending

Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (G) (No change.)

(H) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien) [~~§217.3 (relating to Motor Vehicle Certificates of Title)~~].

(I) (No change.)

(3) - (9) (No change.)

(f) (No change.)

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

A retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. The contract must include [shall have] the following disclosures and provisions, as applicable:

(1) - (3) (No change.)

(4) The amounts of any itemized [Itemized] charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include [,- but are not limited to,] the following charges as applicable and any other charges that are authorized to be

included in the itemized charges under Texas Finance Code, Chapter 348:

(A) - (N) (No change.)

(O) Warranty contract; [ø]

(P) Identity recovery service contract;

(Q) Automobile club membership.

(5) - (8) (No change.)

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (15) (No change.)

(16) Finance charge earnings methods:

(A) - (B) (No change.)

(C) Scheduled installment earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) (No change.)

(II) If sales tax is advanced, and the [a] retail seller either discloses the annual percentage rate using a method other than a 365/365 basis or requires a retail buyer to purchase credit life or credit accident and health insurance, then

~~[and the sales tax is not deferred,]~~ the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(17) - (19) (No change.)

(20) Finance charge refund method. If a contract uses either ~~[the finance charge refunding method of]~~ the sum of the periodic balances method or the scheduled installment earnings method to calculate a refund of the unearned finance charge, the finance charge refund provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this finance charge refund provision should not be disclosed because it is not applicable.

(A) (No change.)

(B) Contracts using the scheduled installment earnings method.

(i) Name of method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of method for sales tax advance. If sales tax is

advanced, then the ~~[The]~~ creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00."

(iii) Optional description of method for deferred sales tax. If sales tax is deferred, then the creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned

finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00."

(C) (No change.)

(21) - (45) (No change.)

§84.809. *Permissible Changes.*

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

Figure: 7 TAC §84.809(b) *{See attached amendments.}*

(c) - (d) (No change.)

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on April 15, 2016.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
1	18.0000%	18.0000%	18.0000%	18.0000%
2	18.0000%	18.0000%	18.0000%	19.9452%
3	18.0000%	18.0000%	18.6541%	22.3624%
4	18.0000%	18.0000%	19.8374%	23.7670%
5	18.0000%	18.0000%	20.5996%	24.6655%
6	18.0000%	18.0000%	21.1215%	25.2754%
7	18.0000%	18.0000%	21.4935%	25.7054%
8	18.0000%	18.0000%	21.7659%	26.0160%
9	18.0000%	18.0000%	21.9688%	26.2435%
10	18.0000%	18.0000%	22.1215%	26.4109%
11	18.0000%	18.0000%	22.2367%	26.5338%
12	18.0000%	18.0000%	22.3232%	26.6226%
13	18.0000%	18.0338%	22.3875%	26.6849%
14	18.0000%	18.0812%	22.4340%	26.7265%
15	18.0000%	18.1171%	22.4664%	26.7513%
16	18.0000%	18.1435%	22.4872%	26.7626%
17	18.0000%	18.1621%	22.4985%	26.7628%
18	18.0000%	18.1743%	22.5020%	26.7540%
19	18.0000%	18.1809%	22.4988%	26.7375%
20	18.0000%	18.1830%	22.4901%	26.7148%
21	18.0000%	18.1811%	22.4768%	26.6867%
22	18.0000%	18.1758%	22.4594%	26.6542%
23	18.0000%	18.1677%	22.4387%	26.6178%
24	18.0000%	18.1570%	22.4150%	26.5783%
25	18.0000%	18.1442%	22.3889%	26.5360%
26	18.0000%	18.1294%	22.3605%	26.4915%
27	18.0000%	18.1130%	22.3304%	26.4449%
28	18.0000%	18.0952%	22.2986%	26.3968%
29	18.0000%	18.0761%	22.2654%	26.3472%
30	18.0000%	18.0559%	22.2311%	26.2964%
31	18.0000%	18.0347%	22.1957%	26.2446%
32	18.0000%	18.0126%	22.1594%	26.1920%
33	18.0000%	18.0000%	22.1224%	26.1387%
34	18.0000%	18.0000%	22.0847%	26.0848%
35	18.0000%	18.0000%	22.0464%	26.0305%
36	18.0000%	18.0000%	22.0077%	25.9759%
37	18.0000%	18.0000%	21.9686%	25.9210%
38	18.0000%	18.0000%	21.9292%	25.8659%
39	18.0000%	18.0000%	21.8895%	25.8106%
40	18.0000%	18.0000%	21.8496%	25.7553%
41	18.0000%	18.0000%	21.8095%	25.7000%
42	18.0000%	18.0000%	21.7693%	25.6447%
43	18.0000%	18.0000%	21.7290%	25.5894%
44	18.0000%	18.0000%	21.6886%	25.5343%
45	18.0000%	18.0000%	21.6483%	25.4793%
46	18.0000%	18.0000%	21.6079%	25.4245%
47	18.0000%	18.0000%	21.5679%	25.3699%
48	18.0000%	18.0000%	21.5273%	25.3155%
49	18.0000%	18.0000%	21.4871%	25.2613%
50	18.0000%	18.0000%	21.4469%	25.2074%

Figure: 7 TAC §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
51	18.0000%	18.0000%	21.4069%	25.1537%
52	18.0000%	18.0000%	21.3670%	25.1003%
53	18.0000%	18.0000%	21.3272%	25.0473%
54	18.0000%	18.0000%	21.2876%	24.9945%
55	18.0000%	18.0000%	21.2481%	24.9420%
56	18.0000%	18.0000%	21.2088%	24.8898%
57	18.0000%	18.0000%	21.1696%	24.8380%
58	18.0000%	18.0000%	21.1307%	24.7865%
59	18.0000%	18.0000%	21.0919%	24.7354%
60	18.0000%	18.0000%	21.0533%	24.6845%
61	18.0000%	18.0000%	21.0149%	24.6341%
62	18.0000%	18.0000%	20.9767%	24.5839%
63	18.0000%	18.0000%	20.9387%	24.5342%
64	18.0000%	18.0000%	20.9009%	24.4847%
65	18.0000%	18.0000%	20.8633%	24.4357%
66	18.0000%	18.0000%	20.8259%	24.3870%
67	18.0000%	18.0000%	20.7888%	24.3386%
68	18.0000%	18.0000%	20.7518%	24.2906%
69	18.0000%	18.0000%	20.7151%	24.2430%
70	18.0000%	18.0000%	20.6786%	24.1957%
71	18.0000%	18.0000%	20.6423%	24.1488%
72	18.0000%	18.0000%	20.6063%	24.1022%
73	18.0000%	18.0000%	20.5705%	24.0559%
74	18.0000%	18.0000%	20.5349%	24.0101%
75	18.0000%	18.0000%	20.4995%	23.9645%
76	18.0000%	18.0000%	20.4643%	23.9194%
77	18.0000%	18.0000%	20.4294%	23.8745%
78	18.0000%	18.0000%	20.3947%	23.8300%
79	18.0000%	18.0000%	20.3602%	23.7859%
80	18.0000%	18.0000%	20.3259%	23.7421%
81	18.0000%	18.0000%	20.2919%	23.6986%
82	18.0000%	18.0000%	20.2581%	23.6555%
83	18.0000%	18.0000%	20.2245%	23.6127%
84	18.0000%	18.0000%	20.1911%	23.5702%

24.6341%

Figure: 7 TAC §84.809(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)
 BUYER _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

SELLER/CREDITOR _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	<input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory Official/Executive <input type="checkbox"/> Used	USE FOR WHICH PURCHASED
							<input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL

Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. <div style="text-align: right;">%</div>	FINANCE CHARGE The dollar amount the credit will cost me. <div style="text-align: right;">\$</div>	Amount Financed The amount of credit provided to me or on my behalf. <div style="text-align: right;">\$</div>	Total of Payments The amount I will have paid after I have made all payments as scheduled. <div style="text-align: right;">\$</div>	Total Sale Price The total cost of my purchase on credit, including down payment of \$ _____ <div style="text-align: right;">\$</div>
<u>My Payment Schedule will be:</u>				
<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>		

Security: You will have a security interest in the motor vehicle being purchased.
Late Charge: [**Sum of the periodic balances method:**] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [**Scheduled installment earnings or true daily earnings method:**] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.
Prepayment: [**True daily earnings method:**] If I pay all that I owe early, I will not have to pay a penalty. [**Sum of the periodic balances or scheduled installment earnings method:**] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.
Additional information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____(1)
2. Downpayment =	
[If netting add: (if negative, enter "0" and see Line 4.A. below)]	
Gross trade-in	\$ _____
- payoff by Seller	\$ _____
= net trade-in	\$ _____
[If not netting add: (if negative enter "0" and see Line 4.A. below)]	
+ cash	\$ _____
+ Mfrs. Rebate	\$ _____
+ other (describe) _____	\$ _____
Total downpayment	\$ _____(2)
3. Unpaid balance of cash price (1 minus 2)	\$ _____(3)
4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):	
A. Net trade-in payoff [<i>Alternative caption: "prior credit or lease balance"</i>] to _____	\$ _____
B. Cost of physical damage insurance paid to insurance company	\$ _____
C. Cost of optional coverages with physical damage insurance paid to insurance company	\$ _____
D. Cost of optional credit insurance paid to insurance company or companies	\$ _____
Life	
Disability	
E. Debt cancellation agreement fee paid to the Seller	\$ _____
F. Official fees paid to government agencies	\$ _____
G. Dealer's inventory tax [<i>Optional addition: (if not included in cash price)</i>]	\$ _____
H. Sales tax [<i>Optional addition: (if not included in cash price)</i>]	\$ _____
I. Other taxes [<i>Optional addition: (if not included in cash price)</i>]	\$ _____
J. Government license and registration fees	\$ _____
K. Government certificate of title fee	\$ _____
L. Government vehicle inspection fees	\$ _____
to state \$ _____ to inspection station \$ _____	
M. Deputy service fee paid to dealer	\$ _____
N. Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]	\$ _____
O. Other charges (Seller must identify who is paid and describe purpose)	
to _____ for _____	\$ _____
to _____ for _____	\$ _____
to _____ for _____	\$ _____
Total other charges and amounts paid to others on my behalf	\$ _____(4)
5. Amount Financed (3 + 4)	\$ _____(5)

[Optional caption: Seller will pay taxes, title fee, license and registration fees, and part of the inspection fee to government agencies. Seller will retain the documentary fee and the deputy service fee. Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	DATE DUE

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. The maximum deductible is \$ _____. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. *Physical damage insurance.* If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$ _____
Comprehensive	_____	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$ _____
Other	_____	<input type="checkbox"/> \$ _____

B. *Optional coverages with physical damage insurance.* If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. *[Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).]*

\$ _____ Towing and Labor Costs Reimbursement \$ _____ Rental Reimbursement

\$ _____ Other: _____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT

Optional insurance coverages and debt cancellation agreement. The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** The credit approval process will not be affected by whether or not I buy these insurance coverages or the debt cancellation agreement. *[Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.]*

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt cancellation agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____
	\$ _____ per person	\$ _____ property damage
	\$ _____ per accident	

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

**YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Credit Life, one buyer \$ _____ Credit Life, both buyers \$ _____ Term _____
 Credit Disability, one buyer \$ _____ Credit Disability, both buyers \$ _____ Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. **[Optional additional language for true daily earnings method contracts:]** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____ Buyer _____ Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[Regular transaction using sum of the periodic balances method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A₂: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$____ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$____ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate.

[True daily earnings method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A₂: Sales Tax Advance) The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[Scheduled installment earnings method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A₂: Sales Tax Advance) The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated**) I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated**) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated**) I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated**) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____		
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

OCCC NOTICE. For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and scheduled installment earnings method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00.) **[Scheduled installment earnings method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional clause for sales tax advance: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00.) (Optional clause for deferred sales tax: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater

than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00.

HOW YOU WILL APPLY MY PAYMENTS [True daily earnings method:] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [True daily earnings method:] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY [Scheduled installment earnings or sum of the periodic balances method:] If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas. (Optional Provisions: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage. The maximum deductible is \$_____.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [True daily earnings method:] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [Scheduled installment earnings method or sum of the periodic balances:] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25 (\$50 for a heavy

commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

SERVICING AND COLLECTION CONTACT You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems).

RETURNED CHECK FEE I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation:

Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.



April 4, 2016

Ms. Laurie Hobbs
Assistant General Counsel
Texas Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

Re: Proposed Rule Changes for Motor Vehicle Installment Sales

Dear Ms. Hobbs:

On behalf of the American Financial Services Association (“AFSA”),¹ thank you for the opportunity to comment on the Office of Consumer Credit Commissioner’s (OCCC) proposed rule changes for motor vehicle installment sales published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1614).

In the proposed rules, Section 84.203 is amended to change the definition of and computation of deferment charges. As written, the proposed amendments to the definition do not adequately identify what constitutes a deferment or whether a finance charge will now be considered a deferment charge for the purposes of the new rules. Accordingly, AFSA requests clarification on the treatment of the finance charge on a deferred payment as a deferment charge. AFSA also requests additional guidance from the OCCC regarding calculation of the deferment charge in order to provide affected financial institutions with greater clarity.

Additionally, AFSA respectfully requests that the OCCC consider the potential negative impact of the proposed deferment charge restrictions on creditors and consumers. Deferments are available to consumers at the discretion of creditors; accordingly, creditors may opt to discontinue the practice if the proposed rules create an excessive administrative burden. Without available deferments, the end result for consumers may be accelerated remedial action.

AFSA also requests additional clarification on the amendments to Section 84.611(e) in the following areas:

- **Retail installment sales contracts “serviced”;** “serviced” is not defined, and additional information on how the OCCC defines serviced is needed. Further, because the proposed amendment adds “serviced” to a list that already includes “originated or acquired,” it is unclear if a company that retains servicing rights for the lifetime of a contract would owe variable fees one time at the origination of the contract or each

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

year over the lifetime of the contract. Similarly, if a company pays the fee when the contract is originated or acquired and subsequently sells the receivable as part of an ABS transaction or whole loan sale, does the acquiring company have to pay the fee again? If this is the case, there could easily be a situation where the initial acquirer, the subsequent acquirer, and the servicer (i.e., the initial acquirer that retains servicing rights) all pay the fee, potentially all in the same year.

- **Dollar volume of retail installment sales contracts;** as written, the rules provide no guidance on the calculation of the dollar volume of contracts, and this creates several issues requiring clarification. Is this volume based on the account balance on a specific date? Is this the date the contract was acquired? Does this include contracts that are paid off in the same year they were purchased or serviced?

Finally, AFSA requests consideration of an amendment to the model retail installment sales contract form to include lines for both “Cash to buyer” and “Payoff by seller” on the itemized list under “Gross Trade-in” in the “Downpayment” section of the standard form. Although the issue is not included in the current proposed rules, it was raised in the context of discussing the proposal with AFSA members, and we respectfully request the OCCC consider amending the form at this time.

Thank you in advance for your consideration. We appreciate the opportunity to work with the OCCC throughout the rulemaking process. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 952-922-6500 or REDACTED.

Sincerely,



Danielle Fagre Arlowe
Senior Vice President, State Government Affairs
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517



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Phone: 512-476-2686
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April 4, 2016

Ms. Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705-4207

Sent via email: laurie.hobbs@occc.texas.gov

Re: Proposed Rules Chapter 84. Motor Vehicle Installment Sales
41 *TexReg* 1613, et seq. (March 4, 2016)

Dear Ms. Hobbs:

On behalf of the Texas Automobile Dealers Association (TADA), please accept the enclosed comments to the proposed rules as published in the *Texas Register* (March 4, 2016) to 7 TAC Chapter 84. Motor Vehicle Installment Sales.

Proposed 7 TAC § 84.205. Documentary Fee.

TADA attended the February 3, 2016, meeting conducted by the Office of Consumer Credit Commissioner (OCCC) regarding a motor vehicle rule review stakeholder's meeting. The time allowed for industry to review the draft of proposed changes and to provide oral comments is appreciated.

Certain concerns expressed at the February 3, 2016, meeting remain in the proposed published rule in the *Texas Register*, specifically relating to the documentary fee.

There are many elements to a documentary fee. There are multiple documents required to complete a motor vehicle purchase. The dealer is required to apply for the registration and title for the vehicle on behalf of the purchaser as well as to remit the necessary fees and motor vehicle sales

tax.¹

The legislature recognizes that properly titling and registering a motor vehicle purchase as well as collecting and remitting the necessary state fees and taxes required of a motor vehicle dealer incurs costs, time, and responsibility.

In addition, multiple additional forms are required by state and federal law when a motor vehicle is purchased. Examples include the required notice under the Gramm-Leach-Bliley Act² for privacy and safeguarding documents. The IRS Form 8300 if a purchaser gives more than \$10,000 in cash in one transaction or in two or more related transactions is also required in certain purchases. In addition to completing the Form 8300, the dealership must give a written or electronic statement to each person named on a required Form 8300 on or before January 31 of the year following the calendar year in which cash is received.³

Prior to charging a documentary fee, a specific notice is required on both a buyer's order as well as a retail installment contract stating that the documentary fee is not an official fee but that it can be charged for handling documents relating to the sale. The fee must be reasonable and agreed to by the parties.⁴

In addition to the buyer's order and the retail installment contract, a documentary fee sign is required to be posted where vehicles are sold in the dealership.⁵

According to the Finance Code:

¹TEX. TRANSP. CODE ANN. § 501.0234(a): "A person who sells at the first or a subsequent sale a motor vehicle and who holds a general distinguishing number issued under Chapter 503 of this code or Chapter 2301, Occupations Code, shall:

(1) except as provided by this section, in the time and manner provided by law, apply, in the name of the purchaser of the vehicle, for the registration of the vehicle, if the vehicle is to be registered, and a title for the vehicle and file with the appropriate designated agent each document necessary to transfer title to or register the vehicle; and at the same time

(2) remit any required motor vehicle sales tax."

(Vernon Supp. 2015)

²Gramm-Leach-Bliley Act, Pub. L. 106-102, 16 C.F.R. Part 313 (1999).

³IRS Form 8300 (Rev. 8-2014) "estimates the average time to complete the form is 21 minutes." (Internal Revenue Code section 6050I.)

⁴TEX. FIN. CODE ANN. § 348.006(c)(Vernon Supp. 2015).

⁵*Id.* § 348.006(d).

Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge. The commissioner may review the amount of the documentary fee for reasonableness. In determining whether a fee charged by a retail seller is reasonable, the commissioner may consider the resources required by the retail seller to perform the retail seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motor vehicle. . .⁶

The legislature recognized that a retail seller may include a documentary fee charge to a purchaser for handling documents relating to the sale as long as the required notice is given and it is charged to both cash and credit buyers. The legislature passed the documentary fee in 1979 with a cap of \$25.⁷ It was increased to \$50 in 1993.⁸

The \$50 fee was repealed in 2009⁹ and new language was adopted whereby the commissioner "may review the amount of a documentary fee for reasonableness and consider the resources required to perform the retail seller's duties under state and federal law regarding handling and processing documents relating to the sale and financing of a motor vehicle."¹⁰

Since 2009, in lieu of a statutory cap, the legislature allows a retail seller to provide written notice to the commissioner of the maximum amount the seller intends to charge. The commissioner may review that amount for reasonableness.

Proposed 7 TAC § 84.205. Documentary Fee. (c) Notification. (3) Form.

The proposed rule requires a seller to notify the agency if the seller intends to charge an amount between \$50 and \$150 for a documentary fee.¹¹ Before charging over \$150, a seller must

⁶*Id.* at § 348.006(e).

⁷Acts 1979, 66th Leg., p. 1016, ch. 450, § 1.

⁸Acts 1993, 73rd Leg., ch. 62, § 2.

⁹Acts 2009, 81st Leg., ch. 238.

¹⁰*Id.* at § 348.006(e).

¹¹41 *TexReg* 1624 (2016) (to be codified at 7 TAC § 84.205(b)(1) (proposed March 4, 2016)).

provide notification and a cost analysis to the OCCC.¹²

The *proposed rule* requires that “notification must be provided on a **form prescribed** by the OCCC for receiving notification of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.”¹³ (Emphasis added)

Juxtaposed to the proposed rule requirement to notify the agency on the agency’s proposed prescribed form is the *statutory provision*: “Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall **provide written notice** to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge.”¹⁴ (Emphasis added)

At the February 3, 2016, meeting, TADA discussed its concern regarding mandating that a specific form be required when notifying the agency of a documentary fee amount. In response, the Preamble as published in the *Texas Register* states: “if a seller sent a written notification to the OCCC on an improper form and made a bona fide effort to communicate its documentary fee amount to the OCCC, the OCCC could exercise its discretion and determine whether the attempted communication constituted the equivalent of a filing.”¹⁵

The statute requires “written notice to the commissioner” and does not provide that the agency is required to adopt a standard form that must be used by a retail seller when notifying the agency of the documentary fee amount.

It is not unusual for the legislature to state when a specific form is to be adopted by an agency. As an example, Finance Code § 348.0091(b) states: “The finance commission **shall by rule adopt a standard form** for the disclosure of equity in a retail buyer’s trade-in motor vehicle.” (Emphasis added).

The Tax Code includes similar language in Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles:

Tax Code § 152.0475(c): “A related finance company may annually register with the comptroller on a **form prescribed by the comptroller**. The comptroller shall make the forms available to the public.” (Emphasis added.)

¹²*Id.* proposed 7 TAC § 84.205(b)(2).

¹³*Id.* proposed 7 TAC § 84.205(c)(3).

¹⁴*Id.* at § 348.006(e).

¹⁵*Id.*, 41 Tex.Reg. 1615.

Tax Code § 152.064(a): “The **comptroller shall prescribe the form** of a tax receipt to be issued to a person paying a tax imposed by this Chapter.” (Emphasis added)

The Occupations Code also contains examples of the legislature requiring an agency to prescribe a form:

Occupations Code § 2301.257: “An application for a dealer’s license must be on a **form prescribed by the department**. . .” (Emphasis added)

Occupations Code § 2301.258: “An application for a manufacturer’s, distributor’s, converter’s, or representative’s license must be on a **form prescribed by the department**. . .” (Emphasis added)

TADA agrees that a standardized form may assist the agency and a licensee; however, TADA requests that the standardized form not be mandated for use. A reading of the statute gives no directive to the agency to adopt a standardized form or that such is required for notice—only that written notice to the commissioner be provided.

If the legislature determined a need for the agency to standardize a form regarding notice, the legislature would have included the requirement within the statute as provided for in other statutes.

TADA suggests that the proposed language be amended in § 84.205(c)(3) to state:

(3) Form. The notification [~~must~~] may be provided on a form prescribed by the OCCC for receiving documentary fee amounts. A notification is [~~not~~] effective when a written notification is received at the OCCC [until the OCCC receives a complete form].

The statute requires that a retail seller shall provide written notice to the commissioner. There is no statutory requirement that a specific form from the agency must be used. Although the Preamble in the *Texas Register* states that if a seller sends a written notification to the OCCC on an “improper form” and makes a “bona fide effort to communicate its documentary fee amount to the OCCC, the OCCC could exercise its discretion and determine whether the attempted communication constituted the equivalent of a filing.”¹⁶

Sending a written letter to the agency regarding the maximum amount the retail seller intends to charge does not appear to be an “improper form” and satisfies the statutory requirement.

Finally, the potential penalty is substantial for a failure to provide notice, i.e., restitution and

¹⁶*Id.* 41 *TexReg* 1615.

an order to lower the documentary fee.¹⁷

Proposed 7 TAC § 84.205. Documentary Fee (d) Cost analysis. (3) Form of Cost Analysis. (B) Supporting Exhibits. (v) Facilities Cost.

The agency's January 13, 2016, pre-comment draft with respect to the facilities cost reduces the includable facilities costs by the amount the dealership is open. The pre-comment draft stated that "if a dealership is open 10 hours per day, 6 days per week, then an appropriate method to calculate includable facilities cost would be:

- (I) Determining hourly fixed costs. This is the total fixed costs for one year divided by the total number of hours in a year (365 days/year x 24 hours/day = 8,760 total hours/year).
- (II) Multiplying the result of subclause (I) by 3,120 hours, which is the dealership's number of business hours in a year (52 weeks/year x 6 days/week x 10 business hours/day).
- (III) Multiplying the result of subclause (II) by the percentage of space used for includable activities (calculated on a square-footage basis).
- (IV) Multiplying the result of subclause (III) by the percentage of business time spent on includable activities in each space. This amount might vary among spaces, requiring the seller to calculate separate includable costs for each space. For example, if the title clerks spend 75% of their time on includable activities, and if the title clerks' office space is occupied during 90% of business hours, then the percentage of business time spent on includable activities in the title clerks' office space would be 67.5% (75% x 90%)."

At the February 3rd meeting, reducing a dealership's costs if it is not open 24 hours a day and 7 days a week regarding the facilities cost analysis was discussed.

In response, the proposed rule now states that the supporting exhibit for facilities must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.¹⁸

However, the Preamble re-states the provisions originally proposed in the pre-comment draft

¹⁷*Id.* proposed § 84.205(c)(5).

¹⁸*Id.* proposed § 84.205(d)(3)(B)(v).

as an example to reduce the documentary fee by the number of hours that a dealership is open.¹⁹ Reducing a business's facility cost by the number of hours open remains a concern, especially in light of the Preamble's re-statement of the pre-comment draft.

A dealer is required by franchise and by statute to have a facility.²⁰ Very often a franchised dealer's facility requirements are quite specific, even down to the color and type of tile and paint and furniture that must be utilized. Overhead is a direct cost and disallowing the time that a dealership is closed does not reflect true cost. In addition, a dealership must comply with Transportation Code § 728.002 (a) which precludes a person on a consecutive Saturday and Sunday from offering or selling a motor vehicle or from compelling an employee to sell or offer for sale a motor vehicle.

TADA also consulted Dixon Hughes Goodman, a nationally recognized public accounting firm, regarding the precomment draft. As the precomment draft language is carried forward in the Preamble, the Dixon Hughes Goodman comments remain applicable to the proposed published rule on the proposed facility reduction formula. As stated in the attached letter (*Attachment 1*) dated February 18, 2016, from Mr. Leslie Fry, CPA:

We believe that the OCCC's methodology is incorrect and would be a burden on each dealership to prove what facility costs are actually incurred for preparing the documents required by law. Generally Accepted Accounting Principles allow overhead costs to be considered as part of the direct cost of a product where there is substantial costs incurred. In an automobile dealership, the facility costs are a significant portion of the costs incurred in the activities required to comply with preparing documents.

¹⁹41 *TexReg* 1616. "Paragraph (3)(B)(v) describes the supporting exhibit for facilities costs. . .As an example, if a dealership is open 10 hours per day, 6 days a week, then one appropriate method to calculate [sic] includable facilities costs would be: (1) determining the hourly fixed costs, which are the total costs for one year divided by the total number of hours in a year (365 days/year x 24 hours/day = 8,760 total hours/year); (2) multiplying the result of (1) by 3,120 hours, which is the dealership's number of business hours in a year (52 weeks/year x 7 days/week x 10 business hours/day); (3) multiplying the result of (2) by the percentage of space used for includable activities (calculated on a square-footage basis); and (4) multiplying the result of (3) by the percentage of business time spent on includable activities in each space. This amount might vary among spaces, requiring the seller to calculate separate includable costs for each space. For example, if the title clerks spend 75% of their time on includable activities, and if the title clerks' office space is occupied during 90% of business hours, then the percentage of business time spent on includable activities in the title clerks' office space would be 67.5% (75% x 90%).

²⁰TEX. TRANSP. CODE ANN. § 503.032 (Vernon 2013).

TADA requests the dealership's facilities cost not be reduced by the number of hours it is or is not open. Overhead is a direct cost and disallowing the time that a dealership is closed does not reflect the dealership's true costs.

Depreciation of Facilities Cost

As discussed at the February 3rd precomment meeting, the precomment draft as well as the published proposed rule does not allow the facilities cost to include any amount for depreciation of the facilities: "Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. **The documentary fee may not include any depreciation of facilities costs. . .**"²¹ (Emphasis added)

The Preamble states that depreciation may not be included in the facilities costs because it is a non-cash expense with an income tax benefit and it is used as a tool for orderly accounting. The Preamble continues by stating that depreciation is an indirect expense, rather than a cost actually paid by a seller to process documents and it is appropriate to exclude depreciation of facilities costs.²²

Disallowing depreciation is a disadvantage to a property owner as compared to a renter. Rent is a cost allowed in the proposal: "The supporting exhibit for facilities must identify all included facilities costs (e.g., **rent**, property taxes, insurance). . ." (Emphasis added)²³

As stated in the attached letter (*Attachment 1*) from Mr. Fry, CPA, with Dixon Hughes Goodman:

We believe that depreciation of facility costs should not be disallowed due to the fact that this would put dealerships who own facilities at a disadvantage to those who rent their facilities. (I.e., the dealership who rents their facilities would be able to justify a higher cost than those that own their facilities.) We believe that all submissions of cost should be made at a level playing field for all dealerships in the State of Texas.

Further, the OCCC states in their explanatory material that Depreciation expense is a non-cash expense with income tax benefit. While that statement is true, the dealership that owns its own facility did pay cash for the purchase of the facility and should be allowed to recoup its allocable cost attributable to the facility used in preparing documents required by law. Depreciation on a facility used to prepare such

²¹*Id.* at proposed § 84.205(d)(3)(B)(v).

²²*Id.* 41 *TexReg* 1617.

²³*Id.* at proposed § 84.205(d)(3)(B)(v).

documents would not be an indirect cost where the dealer has incurred that inside the Dealership entity.

TADA requests that depreciation be allowed in the facilities cost analysis.

Proposed 7 TAC § 84.205. Documentary Fee. (d) Cost analysis. (3) Form of cost analysis. (B) Supporting exhibits. (j) Personnel. (II).

Proposed (II) states that “a commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary was prorated to exclude impermissible costs. If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions.)”²⁴

Many dealership personnel who are responsible for making disclosures and completing documents are paid on a commission basis. Although a commission employee is guaranteed a minimum wage times the number of hours worked, $\$7.25 \times 40 = \290.00 per week, this pay will neither attract nor retain the employee necessary to perform the required documentary fee tasks at a dealership.

According to 2014 information compiled by the National Automobile Dealers Association (NADA), the franchised motor vehicle industry is responsible for 213,217 direct, indirect, and induced jobs in Texas (97,650 direct jobs and 115,567 indirect and induced jobs). The payroll at these Texas dealerships totals just under \$6 billion with the average employee per dealership grossing over \$61,300.00 per year.

Limiting compensation to a base salary in a cost analysis means that the agency's required cost analysis formula understates the true compensation paid to employees handling the documents relating to a motor vehicle sale. If 10% of an employee's required job description and time consists of activities that qualify for the documentary fee, then 10% of their total compensation should be included in the cost analysis.

If a commission employee did not have to provide the documentary fee services, then that employee could spend their time selling and increasing their compensation or the dealership could reduce the number of their personnel. Either way, the base salary of minimum wage x hours worked for a commission employee is not an accurate measure of the paid compensation for the employee handling the documents relating to the sale. TADA requests that the percentage of time required to perform the handling of the documents times compensation be the formula incorporated into the cost analysis.

²⁴*Id.* Proposed 84.205 (d)(3)(B)(i)(I) (41 *TexReg* 1626).

Summary

TADA appreciates the agency's review of the "safe harbor" and its determination that \$150 is an appropriate increase. This proposal will not require a cost analysis to be provided if a dealership is charging less than or equal to \$150. As the agency is aware, the costs at a dealership continue to increase and TADA applauds the agency's recognition of this fact.

Although a prescribed form for notification is useful, the mandating of a prescribed form is not included in the statute and TADA requests that the proposal be modified so that notification "may" be on a prescribed form.

The cost analysis for a facility should not be reduced if the facility is not open 24 hours a day and 7 days a week. This proposed reduction is not an accurate analysis of the true cost incurred and thus the cost analysis will not be accurate under this proposed formula.

In addition, depreciation should be allowed in the cost analysis as the dealership should be allowed to recoup its allocable cost attributable to the facility—the same as rent is an allowable cost.

Finally, commission employees should not be reduced to their base salary, i.e., minimum wage, in the cost analysis. Again, this reduction is not an accurate or true reflection of a dealership's costs. The percentage of an employee's time that is required to perform the handling of documents times compensation should be the formula incorporated in the dealership's cost analysis, not a minimum wage formula.

I appreciate the opportunity to comment. If you have any question regarding, please let me know so that I may respond at your earliest convenience.

Sincerely,



Karen Phillips
General Counsel/EVP

Attachment 1

Attachment 1

February 18, 2016

Ms. Karen Phillips
Executive Vice President
Texas Automobile Dealers Association
1108 Lavaca, Suite 800
Austin, Texas 78701

RE: Comments on Proposed Amendments to the Texas Administrative Code, Title 7,
Chapter 84

Dear Ms. Phillips,

Our firm represents over 150 automobile dealers in the State of Texas and has represented automobile dealers for more than 60 years. We have assisted numerous clients in the preparation of information for justification of costs for the submission to the Office of Consumer Credit Commission (OCCC) for approval of Documentary Fees to be charged to a customer under Title 7, Chapter 84 of the Texas Administrative Code.

We have reviewed the Proposed Amendments to the Code relating to the cost justification for Documentary Fees and disagree with the OCCC's methodology under Paragraph (3)(B)(v) for determining an allocation of facility costs applicable to preparing documents required to comply with local, state or federal law concerning the sale of motor vehicles.

The OCCC has proposed that facility costs only be allowed for a portion of the time and space used for the preparation of such documents. Further, they have given as an example of such calculation as only allowing the facility costs for the time the dealership is open. They refer to all other allocations of facility costs as an "indirect overhead expenses" which would not be allowable to be considered in a cost justification.

We believe that the OCCC's methodology is incorrect and would be burden on each dealership to prove what facility costs are actually incurred for preparing the documents required by law. Generally Accepted Accounting Principles allow overhead costs to be considered as part of the direct cost of a product where there is substantial costs incurred. In an automobile dealership, the facility costs are a significant portion of the costs incurred in the activities required to comply with preparing the documents.

There are numerous other examples from other industries (Healthcare and Defense for example) that allow facility costs to be allowed for the direct production of a product or service.

For example, Medical Clinics get reimbursed from Medicare or Medicaid based on the cost per visit or fee for service. No adjustment is made for the time the facility for the clinic is not open. In addition, the Federal Government allows the reimbursement of Idle Facilities and Idle Capacity Costs in certain government contracts (such as Defense Contracts) under Section 31.205-17 of the Federal Acquisition Register, Part 31 –Contract Cost Principles and Procedures.

We believe that disallowance of Facility Costs for the portion of the time that the Dealership is closed does not adequately reflect the true direct costs incurred by an automobile dealer. We believe that the OCCC's current practice of allowing in the cost justification the sum of total facility costs multiplied by the square foot used in preparation of the documents as a reasonable alternative to the new proposed amendment.

The OCCC has also proposed in Paragraph (3)(B)(v) to exclude depreciation of facility costs. The same paragraph allows rent expense to be included in a cost justification submission. Automobile Dealerships either rent their facilities from a third party or own the dealership land and building inside the Dealership entity. As a result, most dealerships have either rent expense or depreciation expense on facility costs.

We believe that depreciation of facility costs should not be disallowed due to the fact that this would put dealerships who own their own facilities at a disadvantage to those who rent their facilities. (I.e. the dealership who rents their facilities would be able to justify a higher cost than those that own their facilities.) We believe that all submissions of cost should be made at a level playing field for all dealerships in the State of Texas.

Further, the OCCC states in their explanatory material that Depreciation expense is a non-cash expense with an income tax benefit. While that statement is true, the dealership that owns its own facility did pay cash for the purchase of the facility and should be allowed to recoup its allocable cost attributable to the facility used in preparing documents required by law. Depreciation on a facility used to prepare such documents would not be an indirect cost where the dealer has incurred that inside the Dealership entity.

If I can further explain any of the comments, please let me know. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie D. Fry". The signature is written in a cursive, flowing style.

Leslie D. Fry, CPA
Partner, DHG Dealerships

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 1, Chapter 1. The notice of the review was published in the *Texas Register* as required on March 11, 2016 (41 TexReg 1980). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rule contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Rule changes to Chapter 1 are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 1, as the reasons for the rule in this chapter continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 1 continue to exist and that the rule is repropose and readopted.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 1. Consumer Credit Regulation

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 1, Chapter 1, concerning Consumer Credit Regulation. Chapter 1 consists of Subchapter B, which contains §1.201, concerning Interpretations and Advisory Letters.

Notice of the review of 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* as required on March 11, 2016 (41 TexReg 1980). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rule contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC, Chapter 1 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 1, the commission finds that the reasons for initially adopting the rule in this chapter continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 1, Chapter 1.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 82, Concerning Administration

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 82. The notice of the review was published in the *Texas Register* as required on March 11, 2016 (41 TexReg 1979). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Proposed amendments to Chapter 82 are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 82, as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 82 continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration. Chapter 82 consists of §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; §82.3, concerning Request for Criminal History Evaluation Letter; and §82.4, concerning Consumer Complaint Process.

Notice of the review of 7 TAC, Part 5, Chapter 82 was published in the *Texas Register* as required on March 11, 2016 (41 TexReg 1979). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC, Chapter 82 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 82, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 82.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, §1.201, Concerning Interpretations and Advisory Letters, Resulting from Rule Review

PURPOSE: The purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Part 1, Chapter 1 under Texas Government Code, §2001.039. The proposed changes provide clarification, improved grammar, better readability, and technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to §1.201 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to §1.201.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 1. Consumer Credit Regulation
§1.201. Official Interpretations and Advisory Letters

The Finance Commission of Texas (commission) proposes amendments to §1.201, concerning Interpretations and Advisory Letters.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1980). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed changes provide clarification, improved grammar, better readability, and technical corrections. The purposes of amendments to individual subsections are provided in the following paragraphs.

In subsection (a), the proposal includes a new definition of the term "advisory letter." The definition identifies certain documents that are not advisory letters, such as official interpretations, advisory bulletins, and letters sent in connection with an examination or license application.

In subsection (a), the proposal also amends the definition of "interpretation" to use the term "official interpretation." This reflects the agency's convention of referring to interpretations issued under Texas Finance Code, §14.108 as "official interpretations," and helps avoid confusion with other types of statements that the agency issues. Subsections (a), (b), and (c)

contain conforming changes to replace "interpretation" with "official interpretation," and to improve readability and clarity.

In subsection (d), the proposal includes new text for the notice that appears on advisory letters interpreting Texas Finance Code, Title 4, Subtitle A or B. The new text is intended to improve readability and clarity.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §1.201 are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to §1.201 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the public will more easily understand the commission's rules and the notice provided on the agency's advisory letters.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner,

PROPOSED AMENDMENTS

7 TAC §1.201

Page 2 of 4

2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. In addition, the proposed amendment to subsection (b)(4) is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. Official Interpretations and Advisory Letters.

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

(1) Advisory letter--A letter by the commissioner or an OCCC employee providing an informal advisory response to a question concerning a provision of law. The term does not include:

(A) an official interpretation;

(B) an advisory bulletin addressed to a body of stakeholders;

(C) instructions for submitting required information to the OCCC (e.g., annual report instructions);

(D) a report or study provided to the Texas Legislature or the Finance Commission of Texas; or

(E) a letter sent in connection with an examination, investigation, license or registration application, complaint, or enforcement action.

~~[(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (4) of this subsection.]~~

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(3) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) Official interpretation [~~Interpretation~~]--A letter issued by the commissioner and approved by the Finance Commission of Texas under [pursuant to] Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of [certain] relevant facts provided by a [the] requestor.

(b) Required information for official interpretation request. Any person may submit a request for an official

interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting official interpretation. The requestor must state explicitly [~~An explicit statement~~] that an official interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. The requestor must provide a [A] concise description of the contemplated transaction or activity [~~contemplated~~], the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. The requestor must state [~~A statement~~] whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. The agency will charge a \$500 fee [~~A fee of \$500 will be charged~~] for an official interpretation to compensate the agency for the expense involved in researching and answering the request. The requestor should submit the payment of \$500 [~~should be submitted~~] with the request. The agency may [~~determine and~~] remit a partial or full refund if deemed appropriate [~~applicable~~]. The agency may waive the fee.

(5) Additional information. The [A] requestor should [~~also~~] identify each provision of law involved, state [~~and indicate~~] the requestor's opinion of how the legal issues should be resolved, and state the basis for that opinion, including an analysis of any relevant court decisions or related official interpretations [~~, as well as, all prior interpretations to which the request relates~~].

(c) Processing an official interpretation [of] request. Within 10 business days of receiving [~~receipt of~~] a valid request under subsection (b), the agency will file [~~pursuant to this subsection,~~] the request [~~will be filed~~] with the Texas Register for publication. Within 31 calendar days of [~~Upon~~] publication in the *Texas Register*, any person [~~party~~] may [~~within 31 calendar days~~] submit briefs or proposals pertaining to the request.

(1) Official interpretation [~~Interpretation~~] not issued. After publication of a valid request for an official interpretation, the agency may decline to issue an official interpretation. A summary of the agency's reasons for deciding not to issue an official interpretation will be published in the *Texas Register*.

(2) Approved official interpretation. If the agency drafts an official interpretation, then the agency will present the official interpretation [~~The agency may draft an interpretation or a response and present it~~] to the Finance Commission of Texas for approval [~~consideration~~]. If the Finance Commission approves the official interpretation, then within [~~Within~~] 10 business days of the approval [~~of an interpretation by the Finance Commission of Texas~~], the agency will file a summary of the official interpretation [~~will be filed~~] with the Texas Register for publication. Copies of official interpretations will [~~shall~~] contain a statement [~~notation~~] of approval and the date of action by the Finance Commission [~~of Texas~~].

(d) OCCC advisory letters. If the OCCC sends an advisory letter concerning a provision of Texas Finance Code, Title 4, Subtitle A or B, then the advisory letter will include the following statement: "This

~~advisory letter is not an official interpretation approved by the Finance Commission of Texas. The requirements for requesting an official interpretation are in Title 7, Section 1.201(b) of the Texas Administrative Code." [Each advisory letter issued by the OCCC must contain the following notation: "This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code , §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b)]."~~

Certification

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

Issued in Austin, Texas on April 15, 2016.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review

PURPOSE: The purpose of the amendments to these administrative rules is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The proposed amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 82 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Chapter 82.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration
§82.1 - §82.4

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 82, concerning Administration. The commission proposes amendments to all four rules contained in Chapter 82: §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; §82.3, concerning request for Criminal History Evaluation Letter; and §82.4, concerning Consumer Complaint Process.

In general, the purpose of the amendments to Chapter 82 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 82 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1979). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections. The individual purposes of the amendments to each rule are provided in the following paragraphs.

The purpose of the amendments to §82.1 is to update the list of agency employees who have access to criminal history record information, and to make technical corrections that improve readability. The

proposed amendments to §82.1 implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). SB 1075 amended Texas Government Code, §411.095 by adding the following to the list of persons about whom the OCCC can obtain criminal history record information: (1) an employee or volunteer with the OCCC, (2) an applicant for employment with the OCCC, and (3) a contractor or subcontractor of the OCCC.

In §82.1(a), definitions of "commissioner," "criminal history record information," and "OCCC" have been added. In §82.1(b) (current subsection (a)), the provisions referring to the OCCC's use of criminal history record information have been updated to cite Texas Government Code, §411.095. In §82.1(c) (current subsection (b)), the list of agency employees with access to criminal history record information has been updated to include the following employees: the director of strategic communications, administration and planning; and the human resources specialist. These changes reflect the agency's practice. The commissioner has authorized the human resources specialist to review criminal history record information in evaluating applicants for employment. In addition, the director of strategic communications, administration and planning may review criminal history record information in evaluating employees, applicants for employment, contractors, and subcontractors. Subsection (c) also includes

changes to improve readability and conform to the definition of "commissioner."

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification.

The OCCC has recently transferred its public information duties to the legal department and along with that reorganization, has reviewed and updated its public information procedures.

In subsection (a) of §82.2 concerning definitions, the term defined in paragraph (5) has been updated to match the one used by the Office of the Attorney General (OAG) in 1 TAC §70.2. Accordingly, the OAG term "Standard paper copy" is proposed to replace the term "Standard-size copy" in §82.2(a)(5).

Subsection (b) of §82.2 includes several proposed amendments to provide clarification regarding the initial receipt of public information requests by the OCCC. Subsection (b) has been divided into five paragraphs in order to provide better readability. The existing language in §82.2(b) through the phrase "normal business activities" has been retained under new paragraph (1) with the tagline "Generally." The following new closing sentence has been added to proposed §82.2(1) for clarity: "All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally." The remaining language from current subsection (b) has been relocated into new paragraph (4) "Confidential information," and new paragraph (5) "Fee waiver or reduction."

Two new paragraphs proposed in §82.2(b) relate to requests received via email, and those received by other methods. Proposed new §82.2(b)(2) requires that public information requests submitted via email must be sent to the OCCC's designated public information officer, as authorized by Texas Government Code, §552.301(c). Directing requests for public information submitted via email to the public information officer or designee serves to streamline the agency's public information process, and will ensure that all email requests are handled timely and consistently.

Proposed new §82.2(b)(3) provides the agency's address for requests delivered by mail or hand delivery, and the fax number for requests sent by facsimile. This provision reflects the agency's existing policy for requests received by these methods, providing more clarification in the rule.

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions to better reflect current agency practice and provide clarity for requestors of public information. Introductory language is proposed for addition to subsection (c) citing use of the applicable charges established by the OAG. The proposed amendments to §82.2(c) clarify that the charges outlined are the most common charges the OCCC collects to produce copies of public information, but that they may be supplemented or modified as authorized by the OAG cost rules.

In §82.2(c)(1) and (2), references relating to number of pages have been removed, as the OCCC's updated public information procedures will generally not involve a copy charge per page (unless

paper copies are requested). Additionally, the proposed amendments throughout §82.2(c)(1)-(2) better align with the agency's use and requestors' receipt of electronic records.

The proposed amendments to §82.2(c)(1) clarify that no fees will be collected for requests resulting in charges of \$5 or less. This provision is similar to the current language, which states that no fee will be charged for 50 or fewer pages ($\$0.10$ per page x 50 pages = \$5). However, the proposed language would also reflect that labor time of \$5 or less would also not be collected. It is the OCCC's understanding that most state Texas agencies do not collect fees for requests under a certain minimal dollar amount.

The proposed amendments to §82.2(c)(2) outline the application of charges to requests for public information received by the OCCC. In subparagraph (A), the clarifying phrases "copy charge" and "if paper copies are requested" are proposed to clarify when \$0.10 per page will be charged. In subparagraph (B) regarding the existing \$15 per hour of personnel time, the following language is proposed to provide more detail concerning the actions that may be charged for: "locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare." All of these actions are currently authorized by the OAG and used by the OCCC personnel to prepare public information. The proposed language reflects this policy and provides better clarity to requestors. In addition, the phrase "labor or" is proposed for addition before "personnel time," as these two terms are often used interchangeably.

Proposed new subparagraph (C) in §82.2(c)(2) provides for a 20% overhead charge, calculated by multiplying the total personnel cost by 0.20. This 20% overhead charge is authorized by OAG cost rule 1 TAC §70.3(e). The OCCC has decided to begin charging requestors of public information an overhead charge, as the agency and requestors have shifted more to electronic records. An increasing number of the agency's requests involve manipulation of data into electronic spreadsheets, and the labor involved to compile information from the OCCC's databases can result in significant personnel time. Therefore, the controlling cost factor to produce public information is personnel time, and the resulting 20% overhead charge reflects that time.

Section 82.2(c)(3) related to requests for not readily available information is proposed for deletion. While the cited OAG regulation is still valid and available should the agency need it, the OCCC believes it is no longer necessary to include in the agency's rule.

Since the adoption of this provision, the OCCC no longer maintains information at a remote storage location (aside from records stored at the Texas State Library and Archives Commission). In addition to increased digital storage of agency records, the OCCC has implemented an online license application system, where applicants upload documents directly to web-based cloud storage. The OCCC is currently working on a new IT project to include other agency functions, which will result in cloud storage of more types of agency records. Thus, subsection (c)(3) is proposed for deletion as access to remote storage will become less relevant to OCCC records. As a result of this proposed deletion, the

remaining paragraphs have been renumbered accordingly.

Amendments are proposed in §82.2(c)(4) concerning certification to clarify that in addition to certifying copies, the OCCC also provides certified statements that verify information compiled from the OCCC's records. In addition to the commissioner, the proposed amendments include the option for a designated custodian of records to sign the certification.

In proposed §82.2(c)(4) (current (c)(5)), the term has been updated to match the one used by the OAG in 1 TAC §70.3. Accordingly, the OAG term "Nonstandard copy" is proposed to replace the term "Non-standard-size copy" in §82.2(c)(4).

In §82.2(d)(2) regarding expedited delivery, the proposed amendments clarify that a requestor must ask and the agency must agree to provide public information by overnight delivery service or other expedited delivery. A sentence is proposed for addition at the end of the provision to further clarify that the requestor must pay for this service.

Section 82.2(d)(3) is proposed for deletion, as the OCCC will no longer charge for electronic copies of pages that had to be scanned or copied in order to redact confidential information.

In §82.2(e)(2) regarding redaction of confidential information prepared for inspection, references relating to number of pages have been removed and replaced with references to "paper records." The proposed amendments state that if confidential information must be redacted prior to requestor's inspection of paper records, the agency may charge \$0.10 per page to prepare the redacted pages.

Two new paragraphs proposed in §82.2(e) relate to inspection of records. Proposed new §82.2(e)(3) provides that labor charges may be assessed if production of electronic information requires programming or manipulation of data prior to inspection. Proposed new §82.2(e)(4) states that the OCCC will send a cost estimate should a request for inspection result in charges over \$40. Proposed new §82.2(e)(3) and (4) reflect the agency's existing policy for requests to inspect records, providing more clarification in the rule. As a result of the two new paragraphs, the remaining paragraph has been renumbered accordingly.

Additional changes throughout §82.2 improve readability and clarity, and provide technical corrections.

The purpose of the amendments to §82.3 is to clarify the requirements for requesting a criminal history evaluation letter. The proposed amendments to §82.3 implement Texas Occupations Code, §53.102, which allows a person to request that a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person: (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license, and (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

In §82.3(a), definitions of "agency or OCCC," "commissioner," and "principal party" have been added. In §82.3(b) (current subsection (a)), the provisions relating to the rule's purpose have been updated for readability and clarity. In §82.3(c) (current

subsection (b)), the provisions relating to the rule's applicability have been updated to specify the individuals and business entities that may request the criminal history evaluation letter. The proposed amendments include references to the enrollment and examination requirement in Texas Occupations Code, §53.102(a)(1). In §82.3(d) (current subsection (c)), the provisions regarding required information have been updated to require a description of any educational program that the requestor is planning to enroll in, as well as a description of any examination that the requestor is planning to take. In §82.3(f) (current subsection (e)), the fee provisions have been amended to specify that the requestor must pay a fingerprint-processing fee to a party designated by the Texas Department of Public Safety (DPS), rather than a \$40 fingerprint-processing fee to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional changes throughout §82.3 improve readability and clarity.

The purpose of the amendments to §82.4 is to clarify the requirements for consumer complaints under Texas Finance Code, §14.062. In §82.4(b), a definition of "OCCC" has been added. Proposed new subsection (c) explains that as provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution. In §82.4(d) (current subsection (c)), the text of the rule has been updated to specify that if the OCCC receives a complaint from a source other than a person filing the

complaint (e.g., another state agency), then the OCCC is not required to send the policies and procedures to the subject of the complaint or the source of the complaint. Additional changes throughout §82.4 improve readability and clarity.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to Chapter 82 are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

For each year of the first five years the amendments to Chapter 82 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will conform to current practice, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed changes contained in new subsection (c)(2)(C) of §82.2 relating to overhead charged on public information requests.

As stated earlier, the OCCC has recently transferred its public information duties to the legal department and has reviewed and updated its public information procedures. As part of that process, the agency decided to discontinue certain charges and to implement others, all of which are authorized by the existing charges under the Texas Public Information Act (TPIA) and the regulations of the Office of the Attorney General (OAG).

In particular, the OCCC has decided to begin charging requestors of public information an overhead charge, which is calculated by multiplying the total personnel cost by 20%. As the agency and requestors have shifted more to electronic records, the charges for paper copies have been in decline. Furthermore, an increasing number of the agency's requests involve manipulation of data into electronic spreadsheets that do not involve a traditional page count. The labor involved to compile information from the OCCC's databases can result in significant personnel time. Thus, the controlling cost factor to produce public information is personnel time, which does not necessarily relate to number of pages produced. The OCCC believes that the collection of overhead as a percentage of personnel time, as currently authorized by the TPIA and OAG regulations, is necessary and appropriate to help offset the agency's costs in producing public information.

Concerning the anticipated costs to comply with the proposed amendments to §82.2, many requests do not result in any fees, do not involve fees over \$5 (which are not collected), or do not involve personnel time. For those requests, there will be no anticipated costs to comply with the proposal. For requests that do result in fees over \$5 and do involve personnel time, the anticipated costs to requestors are unpredictable. The public information requests received by the OCCC are widely varying in scope and nature. Thus, the personnel time to produce the information and resulting 20% overcharge charged for that time depend on the individual request, and are calculated on a case-by-case basis.

Aside from the anticipated cost of overhead to produce certain requests for public information, there will be no other

effect on individuals required to comply with the amendments to §82.2 as proposed.

Regarding the proposed changes to §§82.1, 82.3, and 82.4, there is no anticipated cost to persons who are required to comply with the amendments as proposed. Also regarding these three rules, there will be no effect on individuals required to comply with the amendments as proposed.

With respect to all of the proposed amendments to Chapter 82, there will be no adverse economic effect on small or micro-businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. The proposed amendments to §82.2 are authorized under Texas Finance

Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14. Additionally, Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The proposed amendments to §82.3 are authorized by Texas Occupations Code, §53.105, which authorizes a licensing authority to charge a fee for a criminal history evaluation letter, in an amount necessary to cover the cost of administering Texas Occupations Code, Chapter 53, Subchapter D.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Criminal history record information--Has the meaning provided by Texas Government Code, §411.082(2).

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(b) Use of criminal history record information. The OCCC may obtain criminal history record information under Texas Government Code, §411.095 and Texas Finance Code, Chapter 14,

Subchapter D. The OCCC's use of criminal history information is limited to evaluating a person described by Texas Government Code, §411.095(a). All criminal history record information received by the OCCC is confidential and is for the exclusive use of the OCCC. The OCCC may not disclose criminal history record information except as provided by Texas Government Code, §411.095(b).

~~[(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC or in determining the character and fitness of a current license holder of the OCCC. All criminal history record information received by the OCCC is confidential information and is for the exclusive use of the OCCC. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.]~~

(c) Employee access. [(b)] Access to criminal history record information maintained by the OCCC will be limited to the following persons:

(1) the commissioner [Consumer Credit Commissioner];

(2) - (6) (No change.)

(7) the director of strategic communications, administration and planning;

(8) the human resources specialist;

(9) [(7)] any person appointed to act on behalf of or in the stead of any of the above; and

(10) [(8)] any employee of the OCCC who:

(A) [that] requires access to criminal history record information in order to fulfill the employee's duties; and

(B) is [as designated and] approved by the commissioner or the director of consumer protection to view criminal history record information [a party provided in paragraph (1) or (5) of this subsection].

§82.2. Public Information Requests; Charges.

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

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(5) Standard paper [~~Standard size~~] copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) Receipt of public information request.

(1) Generally. Upon receipt of a written request from a requesting party which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities. All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally. [—on condition that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.]

(2) Requests by email directed to OCCC public information officer or designee. Public information requests submitted via email must be sent to the OCCC's designated public information officer.

(3) Requests sent by other methods. Public information requests, other than email requests, may be submitted to the OCCC as follows:

(A) By mail or hand delivery. Submit the request to Public Information Officer, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705; or

(B) By fax. Submit the request to 512-936-7610.

(4) Confidential information. Information that is confidential by law will not be provided except under court order, attorney general directive, or other legal process.

(5) Fee waiver or reduction. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.

(c) Copy and service charges. The cost to any person requesting copies of public information from the OCCC will be the applicable charges established by the Office of the Attorney General under Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information). This subsection outlines the OCCC's most common charges to produce copies of public information. These charges may be supplemented or modified as authorized by 1 TAC Chapter 70.

(1) Fees not collected [50 pages or fewer]. No fee will be collected [charged] for requests [for 50 or fewer standard size copies of public information] resulting in charges of \$5 or less.

(2) Application of charges. The [More than 50 pages. For standard size copies of more than 50 pages of public information, the] following charges may [will] apply to requests for public information:

(A) \$0.10 copy charge per page if paper copies are requested; [and]

(B) \$15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare [locating, copying, and preparing] the information for delivery or inspection; [and.]

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

[~~(3) Not readily available information. For standard size copies of information that is not readily available and that must be retrieved from a separate or remote storage location as per Texas Government Code, §552.261, and regardless of number of pages, a charge of \$15 per hour of personnel time spent driving to and from the storage location or locating, retrieving, and restoring the information may be added to the charges specified by this subsection as per 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information).~~]

(3) ~~(4)~~ Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of \$5 per certification will be added to the computed fee. The certification will include [A certified statement copy will bear] the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) ~~(5)~~ Nonstandard ~~[Non-standard-size]~~ copies. The cost for nonstandard [non-standard-size] copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

(5) ~~(6)~~ Cost estimates.

(A) Over \$40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over \$100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is [copies are] required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information [copies are required to be sent] by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

~~[(3) Email. When copies of more than 50 pages are sent via email, the \$0.10 per page copying charge will not apply except for pages requiring redaction of confidential information.]~~

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees will be provided.

(2) Redaction of confidential information from paper records [and more than 50 pages]. If confidential information must be redacted prior to a requestor's inspection of paper records [and the request totals more than 50 pages], \$0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Inspection of electronic information. Labor charges may be assessed if production of the information requires programming or manipulation of data (including redaction). Overhead is not charged.

(4) Over \$40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) [(3)] Over \$100. If a request for inspection would result in charges of over \$100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

§82.3. Request for Criminal History Evaluation Letter.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Principal party--An individual who would qualify as a principal party as

provided by the relevant chapter of this title under which a business entity is considering applying for a license or registration.

(b) [(a)] Purpose [and definitions]. The purpose of this section is to provide the procedures for a potential applicant [a person considering applying for a license from the Office of Consumer Credit Commissioner] to request a criminal history evaluation letter from the OCCC [regarding the person's eligibility for a license] under Texas Occupations Code, Chapter 53, Subchapter D. [This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).]

(c) Applicability.

(1) This section applies to an individual who:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information;

(B) is enrolled or planning to enroll in an educational program that prepares the individual for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(C) has reason to believe that the individual is ineligible for the license or registration due to a conviction or deferred adjudication for a felony or misdemeanor offense, as provided by Texas Occupations Code, §53.102(a)(2).

(2) This section applies to a business entity that:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information; and

(B) has at least one principal party who:

(i) is enrolled or planning to enroll in an educational program that prepares the principal party for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(ii) has reason to believe that the business entity is ineligible for the license or registration due to a conviction or deferred adjudication for a felony or misdemeanor offense of the principal party, as provided by Texas Occupations Code, §53.102(a)(2).

~~[(b) Applicability. This section applies to all persons, including business entities, considering applying for a license with the agency under Title 4 of the Texas Finance Code. This section also applies to any other licensed business, occupation, or profession requiring a criminal history evaluation assigned to the regulatory authority of the agency under other law.]~~

(d) [(e)] Required information. In order to request [A request for] a criminal history evaluation letter, a person must submit the request [must be submitted] in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. The [Appropriate fees must be filed with the

~~request, and the]~~ request must include the following:

(1) a description of any educational program that the requestor is enrolled in or planning to enroll in to prepare for the license or registration;

(2) a description of any examination that the requestor is planning to take for the license or registration;

(3) [(4)] all court documentation relevant to the requestor's criminal history, including:

(A) copies of all court indictments, judgments, and orders against the requestor; and

(B) an explanation of the circumstances and events of the criminal action that led to the arrest, conviction, or sentence;

(4) [(2)] the basis for the requestor's potential ineligibility for a license or registration; and

(5) [(3)] an explanation of [as to] why any potential ineligibility should be disregarded.

(e) [(d)] Business entities. A business entity [Business entities] must provide the information required by subsection (d) [(e) of this section] for the entity and for each principal party. [every individual who would qualify as a principal party if the entity were applying for a license. To determine qualifying principal parties, each business entity requesting a determination under this section should consult the definition of "principal party" located in the respective

~~chapter of this title under which the entity is considering applying for a license.]~~

~~(f) [(e)] Processing fees. A requestor must pay a \$75 processing fee to the OCCC for each individual or business entity that is considering applying for a license or registration. The requestor must pay the fee at the time the request is filed. In addition, for each individual potential applicant and each principal party, the requestor must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [The fees to process a request for a criminal history evaluation letter are \$75 for each entity requestor plus \$40 for fingerprint processing for each individual or principal party included in the criminal history evaluation letter request.]~~

~~(g) [(f)] Notice of agency determination. Upon completion of the agency's investigation, the agency will notify the requestor of the agency's determination within 90 days of the requestor satisfying all of the agency's requests for information to complete the criminal history evaluation letter request. The determination letter will include the agency's determination on each ground of potential ineligibility.~~

§82.4. Consumer Complaint Process.

(a) Purpose. The purpose of this section is to clarify the applicability of Texas Finance Code, §14.062, Consumer Information and Complaints.

(b) Definitions. The following terms, when used in this section, have the following meanings:

(1) OCCC--The Office of Consumer Credit Commissioner of the State of Texas

~~[Generally. This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges)].~~

(2) Person filing the complaint--An [complaint. For purposes of Texas Finance Code, §14.062(b) and (c), "person filing the complaint" means an] individual who has sought or is seeking to obtain goods, services, or financing from a commercial entity. This definition applies for purposes of Texas Finance Code, §14.062(b) and (c).

(c) Copy of OCCC policies and procedures. As provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution.

(d) Copy [(e) Notice] of [OCCC] policies and procedures not required. If [When] the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then ["person filing the complaint" as defined in subsection (b)(2) of this section, the OCCC is not required to send the policies and procedures [relating to complaint and investigation and resolution] to the subject of the complaint or the source of the complaint.

Certification

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

Issued in Austin, Texas on April 15, 2016.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

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C.

Texas Department of Banking



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 /877-276-5554
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To: Finance Commission Members
From: Kurt Purdom, Director of Bank & Trust Supervision
Date: March 31, 2016
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2016							
					8/31/2014		8/31/2015		11/30/2015		2/28/2016	
Industry Profile (# / Assets in billions)												
# Banks	273	\$225.2	256	\$240.7	253	\$242.3	250	\$246.3				
# Trust Co. (1)	21	\$40.5	20	\$97.1	21	\$95.5	20	\$97.5				
# FBA/FBB	10	\$93.6	9	\$89.2	9	\$81.5	9	\$77.9				
Examinations Performed												
Banks	125		118		33		23					
Trust Co.	32		28		6		5					
FBA/FBB	2		2		0		0					
Bank Uniform Financial Institution Composite Ratings												
1	128	46.9%	127	49.6%	126	49.8%	131	52.4%				
2	132	48.3%	122	47.7%	120	47.4%	111	44.4%				
3, 4, & 5	13	4.8%	7	2.7%	7	2.8%	8	3.2%				
Non-Rated	0	-	0	-	0	-	0	-				

(1) Fiduciary assets for non-exempt trust companies only.

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5 to be a problem institution. Problem banks peaked during the last recession at 58. There has been a steady reduction since the peak in June of 2010. However, in the last three months, problem bank numbers have slightly increased to 11 as of 3-31-16. We still consider this increased total to be in the normal range of between 3% and 5% of the total number of institutions, but we will continue to closely monitor banks that have a significant exposure to a protracted period of low oil prices.

Administrative/Enforcement Actions <i>(Number outstanding as of the date indicated)</i>		FY 2016				
		8/31/2014	8/31/2015	11/30/2015	2/28/2016	5/31/2016
Banks - Safety and Soundness						
Formal	5	2	2	1		
Informal	21	14	14	15		
Banks - Bank Secrecy Act (BSA)						
Formal	0	1	0	0		
Informal	1	0	1	0		
Banks - Information Technology (IT)						
Formal	0	0	0	0		
Informal	4	2	2	1		
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0		
Informal	1	2	3	3		
Total Administrative/Enforcement Actions						
Formal	5	3	2	1		
Informal	27	18	20	19		
Total	32	21	22	22		

Formal actions include Orders to Cease and Desist, Consent Orders and Written Agreements.
 Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.
 Orders of Supervision, Orders of Conservatorship and Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2015	FY 2016 (YTD)
Commercial Banks <i>(All / DOB Only)</i>	94% / 93%	94% / 93%
IT	95% / 95%	98% / 100%
Trust	97% / 100%	95% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	97%	78%
IT	100%	88%

Division Highlights

- Oil and Gas Risk Analysis: Efforts continue to assess the risks associated with bank business lines directly and indirectly dependent upon oil and gas production. Review Examiner Whitson collects quarterly information from banks that are known to be actively involved in oil and gas lending or are located in areas that are heavily dependent on oil production. Staff continues to work closely with our FDIC and Federal Reserve Bank counterparts to perform follow-up reviews at institutions with potentially higher risk profiles. With few exceptions, financial institutions with elevated exposure to low oil prices are actively monitoring their exposure and stress testing oil and gas credits to better anticipate potential problems.
- Cybersecurity Threats: The Department continues to work with the banking industry to enhance the policies, procedures and practices that institutions will use to counter cyber threats. As reported previously, the Cybersecurity and Critical Infrastructure Work Group (CCIWG), which Director of IT Security Examinations Phillip Hinkle is a member of, released the Cybersecurity Assessment Tool (CAT) on 6-30-15. The tool is designed to assist bank managers in evaluating their inherent risks to cyber threats and measuring their preparedness to handle such events. Though the use of this tool by bank managers is optional, preparing for cyber risks is not optional. Throughout 2016, the Department's IT Specialists will be evaluating how well institutions are managing their cyber risk. After eliminating the banks that will be examined this year, we estimate that approximately 73 special reviews of cyber risk preparedness will be completed by our IT Specialists in 2016. By year end, we anticipate that all banks will have been reviewed.
- Special Operations and Conferences:
 - The Division's Bank Secrecy Act (BSA) Specialists conducted BSA training for division staff the weeks of 2-8-16 and 2-23-16 in Los Colinas and San Antonio, respectively. BSA training was added to the core training curriculum for all division examiners.
 - Director Purdom participated in training for CSBS accreditation team members the week of 2-15-16 in Phoenix, Arizona.
 - Commissioner Cooper and other agency staff members participated in Independent Bankers Association of Texas (IBAT) regional meetings the week of 2-29-16.
 - Commissioner Cooper participated in the ICBA Community Bank Conference the week of 3-7-16 in New Orleans.
 - Director Purdom and Regional Director Anderson participated in an FDIC Banker Roundtable Discussion held in Lubbock on 3-29-16.

- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

Federal Programs	Troubled Asset Relief Program (TARP)⁽²⁾	Small Business Lending Fund (SBLF) as of 2/29/2016
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed (\$ in millions)	\$2,837.7	\$255.7
Number of Banks with Outstanding Funds	0	5
Total Amount Outstanding (\$ in millions)	\$0	\$47.3

(2) - The U.S. Treasury sold some of the TARP debt listed above at auction to private investors. In many cases, this debt is still outstanding, even though it is no longer payable to the U.S. Treasury.

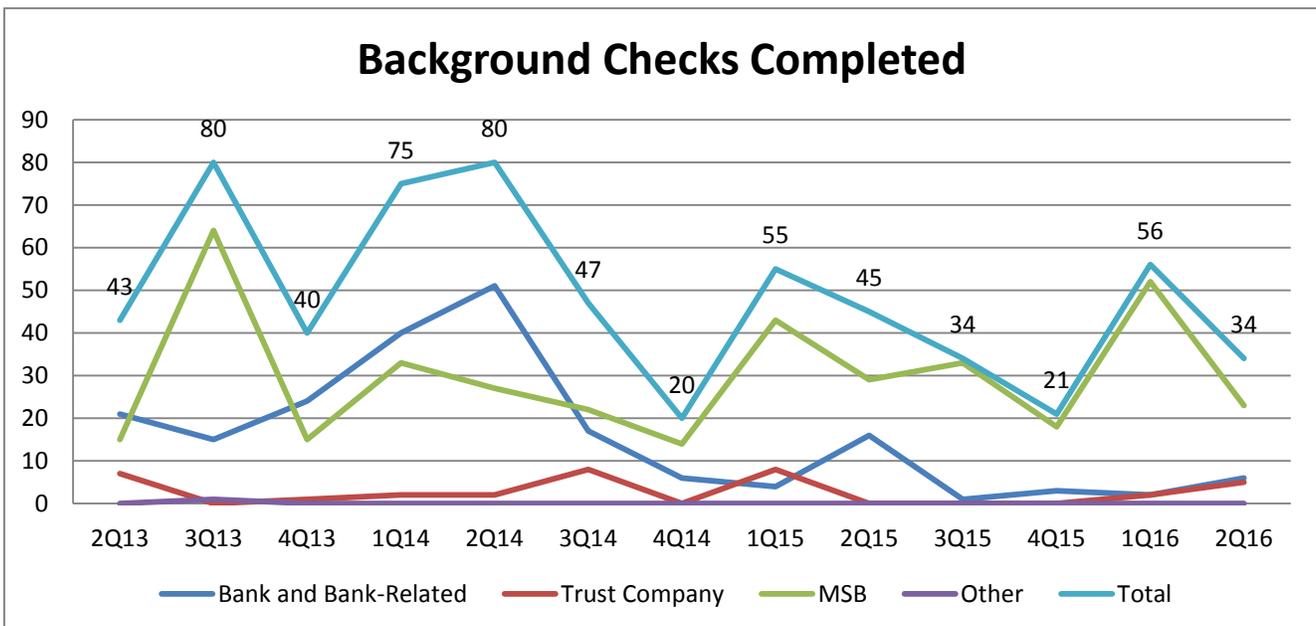
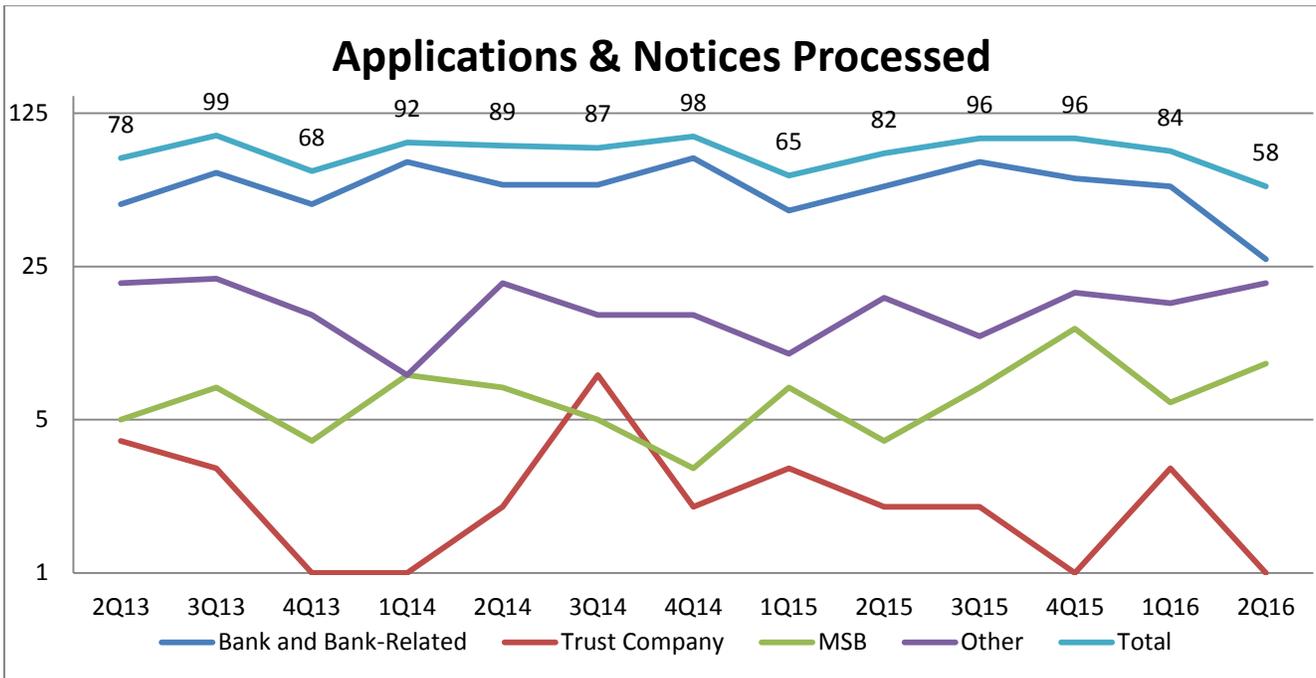


TEXAS DEPARTMENT OF BANKING

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Charles G. Cooper
 Commissioner

To: Finance Commission Members
 From: Daniel Frasier, Director of Corporate Activities *DBF*
 Date: March 31, 2016
 Subject: Summary of the Corporate Division Activities



Entities/Activities	Application and Notices Under Review (as of March 30, 2016)
Bank and Bank Related	21
Trust Companies	3
MSBs	6
Others	3
Totals	33

Division Highlights

- The volume of applications received declined appreciably in the second fiscal quarter of 2016, which we attributed to economic uncertainty. More recently, we have seen a flurry of bank and MSB applications filed in the last two weeks of March, 2016.
- Chartering, Conversion, and Merger Activity – The following transactions consummated in the second quarter of the 2016 fiscal year:
 - *Banks*
 - Security State Bank, Anahuac, merged with and into Post Oak Bank, N.A., Houston
 - Prosperity Bank, El Campo, completed its merger acquisition of Tradition Bank, Houston
 - Wellington State Bank, Wellington, completed its merger acquisition of Security State Bank, Littlefield
 - *Trust Companies*
 - N/A
- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings:
 - Corporate Analyst Xazel Garcia represented the Department at the 8th Annual NMLS Conference in Phoenix, Arizona, on February 16th through the 19th.



Charles G. Cooper
Commissioner

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits *Russell Reese*

Date: April 1, 2016

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2016							
Entity	FY2014		FY2015		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))												
MSB	136	\$96.0	142	\$104.0	147	\$104.1	151	\$105.0				
PFC	381	\$3.4	383	\$3.6	378	\$3.6	380	\$3.7				
PCC	242	\$286.6	243	\$298.0	245	\$305.4	243	\$307.2				
CB	4	n/a	8	n/a	9	n/a	9	n/a				
PCSEA	11	n/a	11	n/a	11	n/a	10	n/a				
CVE	3	n/a	2	n/a	2	n/a	2	n/a				
Examinations Performed												
MSB	93		97		24		22					
MSB Limited Scope	0		2		1		1					
MSB Accepted other State	6		7		3		6					
PFC	295		259		94		48					
PFC Limited Scope	10		6		3		0					
PCC	179		211		29		31					
PCC Limited Scope	6		1		2		3					
Ratings (# / %) Assigned to All Regulated Entities												
1	319	43%	340	45%	327	43%	330	44%				
2	355	48%	332	45%	348	46%	337	45%				
3,4, & 5	66	9%	78	10%	81	11%	85	11%				
Noncompliance with Examination Priorities (Past Due)												
MSB	15		8		14		17					
PFC	1		4		3		7					
PCC	4		3		3		1					
Enforcement Actions												
MSB	3		9		1		3					
PFC	1		10		1		0					
PCC	0		0		0		0					
PCSEA	0		0		0		1					

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

Division Activities:

- The 17 MSB past due examinations are on average 45 days past due.
- Six of the eight PFC/PCC past due examinations are on average 30 days past due. The remaining two PFC/PCC past due examinations are in legal proceedings, which prohibited the completion of the examinations.
- Our current examination schedule reflects that three of the past due PFC/PCC examinations were completed in March 2016, two will be completed in April 2016 and one will be completed in May 2016.
- Our current examination schedule reflects that five of the past due MSB examinations were completed in March 2016, nine will be completed in April 2016 and three will be completed in May 2016.
- Special Audits met all performance measures for the second quarter of FY 16.

On January 28th, Deputy Commissioner Newberg, on behalf of MTRA, met with various members of the Financial Action Task Force (FATF) in Washington D.C. to provide insight to the members on understanding how state and federal regulators work together to supervise MSBs. FATF is the international standard-setting body for AML/CFT safeguards.

On February 1st, the Commissioner entered into two Consent Orders with companies that were providing accelerated loan payment services for Texas consumers without a money service business license. Both companies, Autolink Payment Services, Inc., Santa Monica, California; and Automatic Funds Transfer Services, Inc., Seattle, Washington, have ceased the unlicensed activity, refunded all Texas customer payments, and paid the assessed penalties.

On February 22nd the Department issued Supervisory Memorandum 1013 (SM) that authorizes MSB license holders to release examination reports to banks under certain conditions. Also, on the same date, the Department issued SM 1015 which clarifies that under the Texas Money Services Act an MSB must have an in-house Chief Compliance Officer, but may outsource other BSA compliance functions.

MSB Financial Examiners met in Round Rock the week of March 14th to discuss current events in the industry and to receive additional training on performing examinations and submitting compliant examination reports.

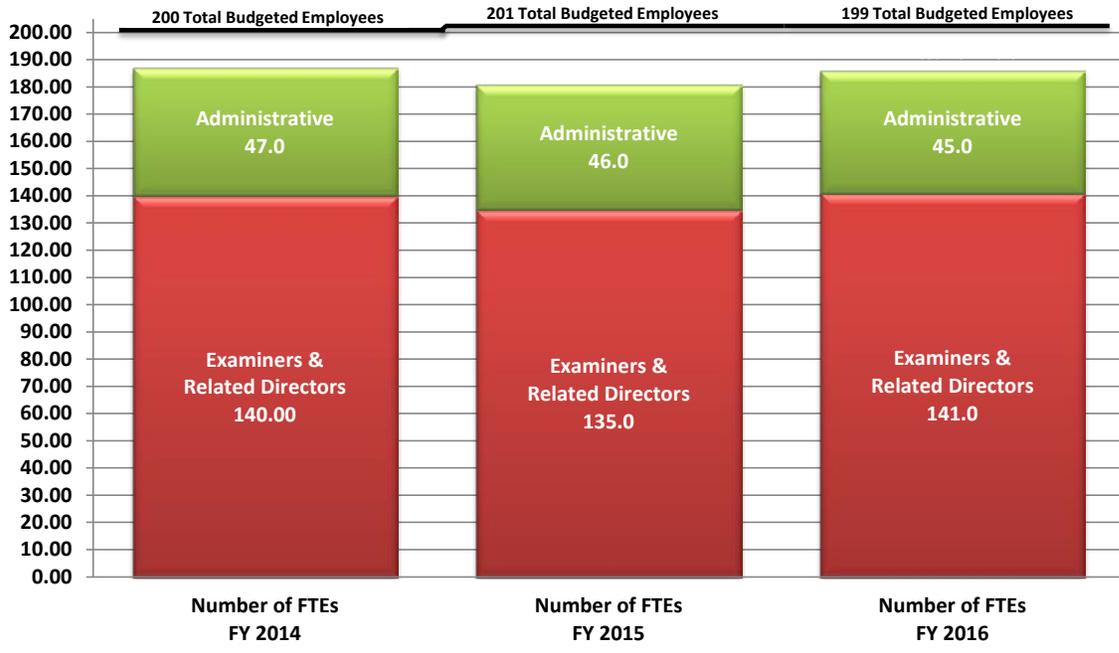
Actual Performance for Output/Efficiency Measures
Fiscal Year 2016
For Period Ending February 2016

Type/Strategy/Measure	2016 Target	2016 Quarter	2016 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1	BANK EXAMINATION			
	1. # BANK EXAMINATIONS PERFORMED			
Quarter 1	115	33	33	28.70%
Quarter 2	115	23	56	48.70%
	2. # TRUST/IT EXAMINATIONS PERFORMED			
Quarter 1	234	61	61	26.07%
Quarter 2	234	59	120	51.28%
1-2-1	NON-BANK EXAMINATION			
	1. # SPECIAL AUDIT LICENSEES EXAMINED			
Quarter 1	560	156	156	27.86%
Quarter 2	560	111	267	47.68%
1-3-1	APPLICATION PROCESSING			
	1. # LICENSE APPLICATIONS COMPLETED			
Quarter 1	284	84	84	29.58%
Quarter 2	284	58	142	50.00%

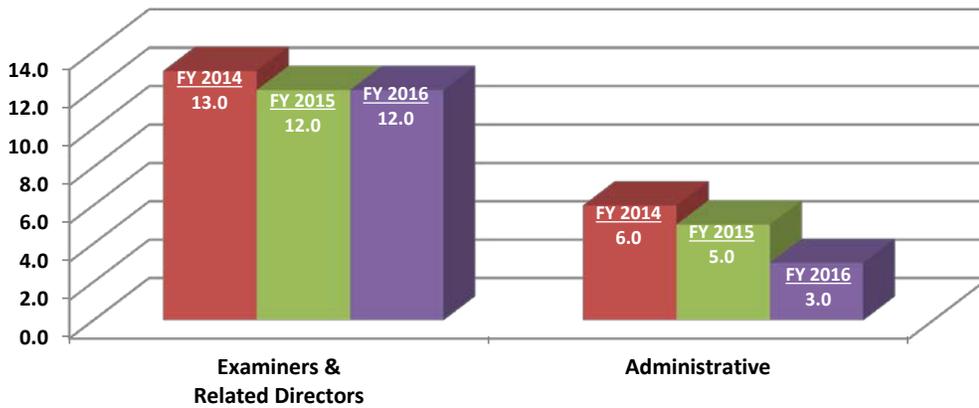
* Varies by 5% or more from target.

Texas Department of Banking

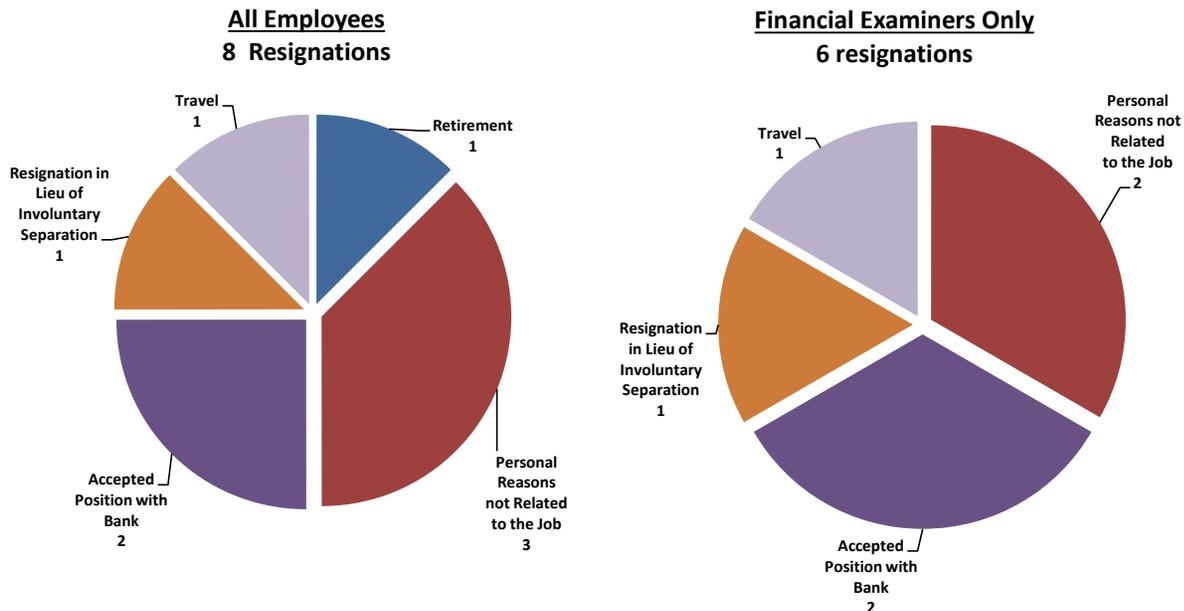
Employee Data for Fiscal Years 2014, 2015 and 2016 as of 2/29/16



New Hire Data for Fiscal Years 2014, 2015 and 2016



FY 2016 Employee Turnover Reasons





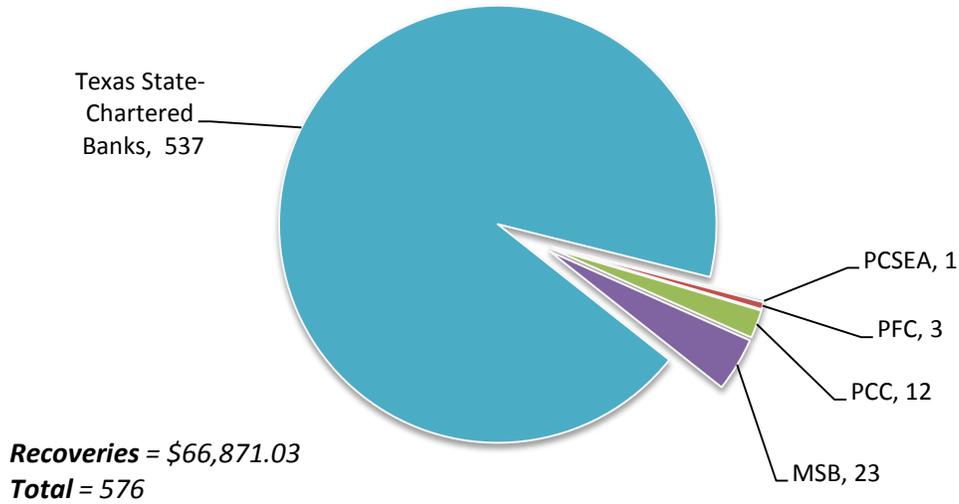
Charles G. Cooper
Commissioner

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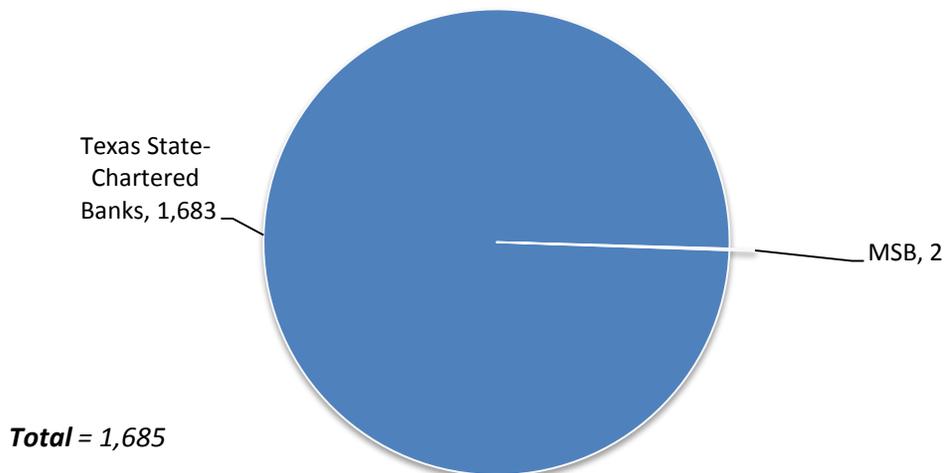
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To: Finance Commission Members
From: Wendy Rodriguez, Director of Strategic Support *WR*
Date: April 1, 2016
Subject: Summary of the Strategic Support Division Activities

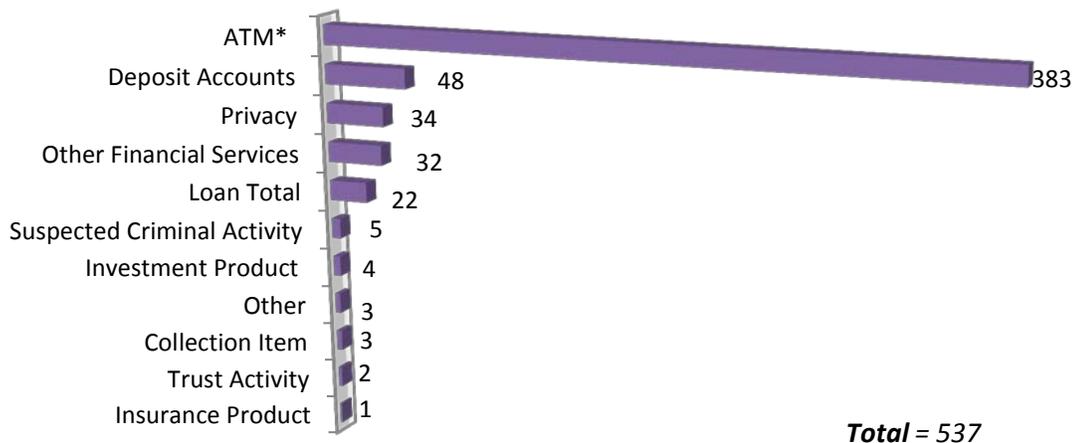
Complaints on Regulated Entities September 2015 - February 2016



Inquiries on Regulated Entities September 2015 - February 2016

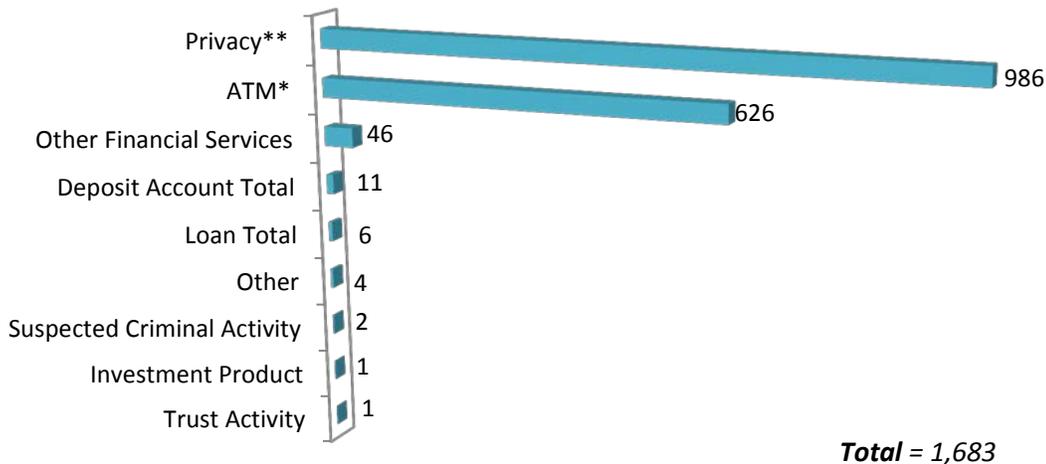


**State-Chartered Banks and Trust Companies
 Complaints by Type
 September 2015 - February 2016**



*High activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.

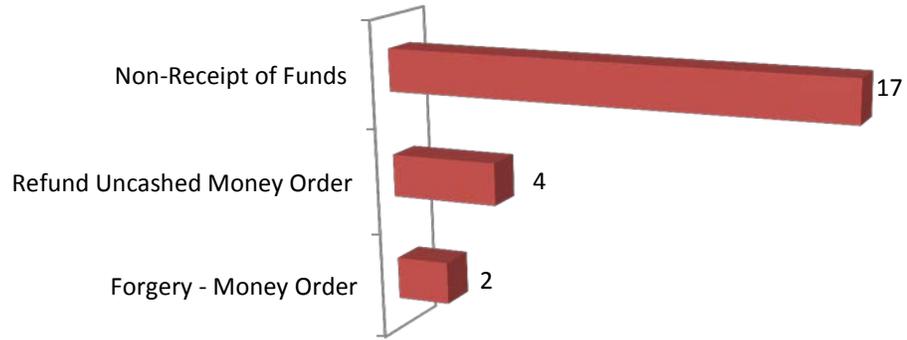
**State-Chartered Banks and Trust Companies
 Inquiries by Type
 September 2014 - February 2016**



** High activity related to annual privacy notice containing the Department's contact information.

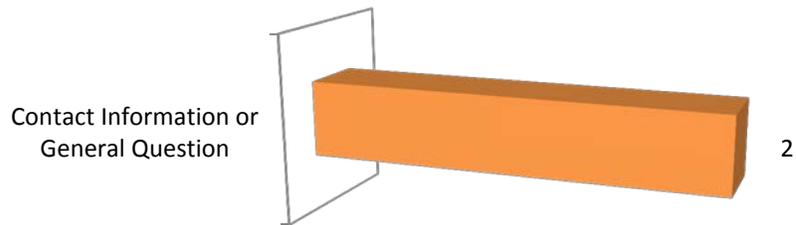
*Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.

**Money Services Businesses
Complaints by Type
September 2015 - February 2016**



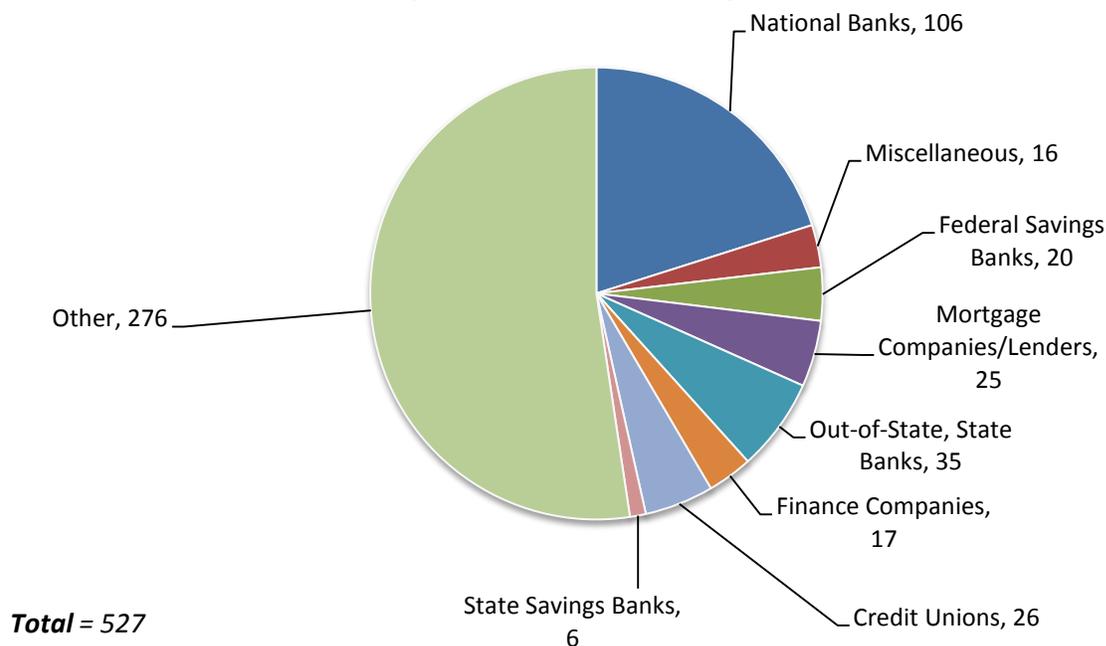
Total: 23

**Money Services Businesses
Inquiries by Type
September 2014 - February 2016**



Total: 2

**Complaints and Inquiries Against Nonregulated Entities
September 2015 - February 2016**



On occasion, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Average Number of Days to Close a Complaint

Type	Sept. 2015 –Feb. 2016
State-Chartered Banks	23
Trust	n/a
PCSEA	n/a
PFC/PCC	37
MSB	45

CANS Activity

January 1, 2012 – March 30, 2016

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	231	1,461
Texas State-Chartered Savings Banks	25	59
Federal Savings Banks	10	200
State Credit Unions	132	1,075
Federal Credit Unions	229	1,045
National Banks	168	470
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	44
Total	810	4,354

Bank Examination Testing System (BETS) Activity

	FY 2013	FY 2014	FY 2015	FY 2016 <i>Sep. March</i>
Number of Candidates Passing Each Phase				
I. General Knowledge	3	5	8	6
II. Loan Analysis	8	2	2	2
III. Panel	10	2	4	2
IV. Test Bank	11	1	4	2
Total FE3	16	14	19	19

Promotions

From FE3 to FE4 (Commissioned Examiner)	9	2	4	2
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Other Divisional Items:

- The March 2016 edition of the Condition of the Texas State Banking System report is available with financial data as of December 31, 2015.
- **Policy**
 - Supervisory Memorandum 1003 - Exam Frequency for Banks
 - Banks with total assets of \$10 billion or greater qualify for the continuous examination program. Prior to this revision, banks with total assets of \$20 billion or greater qualified for a continuous examination.
 - Supervisory Memorandum 1020 - Exam Frequency for IT
 - Current revisions are found in the IT Examination Scope and Frequency Schedule. The table was modified as follows:
 1. banks with total assets of \$10 billion or greater qualify for the continuous examination program; and,
 2. banks with total assets of \$1 billion or less may qualify for an 18 month examination cycle.
 - Supervisory Memorandum 1025 - Level II Exams for Banks
 - Revisions to this Memorandum include:
 1. changing the criteria to include institutions with total assets up to \$1 billion; and,
 2. modifying the examination scope to require a thorough and comprehensive review of the bank's unclaimed property procedures and reporting practices.
 - **Training**
 - On March 21 -24, 2016, the Department hosted a staff training. A multitude of speakers were invited to present on a variety of subjects, including the economy, cybersecurity, capital markets, and suspicious activity reports.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

TO: Finance Commission Members
FROM: Catherine Reyer, General Counsel
DATE: April 1, 2016
RE: Legal Division Update

Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4 affirming the Commissioner's order. The cemetery owner has filed an appeal to the Third Court of Appeals, and our reply brief was filed on November 23, 2015. On December 23, 2015, the appellate court designated the case as ready to be disposed of on the briefs. Because Antioch has not obtained a supersedeas bond; the penalty from our administrative action is due and owing. Abstracts of judgment have been filed in Dallas and Tarrant Counties and warrant holds have been issued.

State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery et al., Cause No. D-1-GN-16-000565, in the 353rd Judicial District Court of Travis County, Texas. This case was filed on February 19, 2016 to seek the appointment of a receiver.

State of Texas v. House Savings Investment, LLC, et al, Cause No. D-1-GV-13-000763, in the 353rd District Court of Travis County, Texas. On July 26, 2013, the district court issued a temporary restraining order and appointed a temporary receiver under the authority of Chapter 151, Texas Finance Code, to take control of two companies performing money services business activities (bi-monthly mortgage payments). An agreed permanent injunction and appointment of permanent receiver order was entered by the court on August 13, 2013. The receiver closed the company offices in Houston and has continued to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. On March 31, 2016, the receiver filed a motion for authority to make distribution of settlement proceeds. In the motion, the receiver stated that if the distribution is approved by the court, it intends to file a subsequent motion to close the estate after all assets have been distributed.

Contested Case Hearings

In re El Paso Mission Funeral Home, Inc., Docket No. BF-1508-15-251. El Paso Mission Funeral Home was alleged to have cancelled several prepaid funeral benefit contracts (PFBCs) and withdrawn the associated funds from the trust account without authorization from the purchasers. The Department is seeking restitution and administrative penalties. The matter is currently set for hearing on April 8, 2016.

Gifts Received by DOB

On March 6, 2016, the Independent Community Bankers of America (ICBA) waived a registration fee (valued at \$995.00) for Commissioner Cooper to attend the 2016 ICBA Convention held in New Orleans.

On February 16-19, 2016, the State Regulatory Registry, LLC provided a scholarship (valued at \$1,716.00) for Xazel Garcia to attend the 2016 NMLS Annual Conference & Training in Phoenix.

Orders

Since the last Legal Division memo was prepared, the Commissioner issued two orders, both of which are final public orders:

Special Audits

- Order No. 2016-005, dated 3/28/2016; Consent Order, Treasury Vault, LLC, Draper, Utah
- Order No. 2016-006, dated 3/28/2016; Consent Order, Coin Café, Inc., Brooklyn, New York

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §15.42 Concerning Establishment and Closing of a Branch Office

PURPOSE: Amendment to §15.42 provides that for relocations of bank branch offices within a one-mile radius, only notice and a nominal filing fee are required. Banks seeking to relocate a branch outside a one-mile radius will follow the procedures for closing and opening a branch.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §15.42. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC §15.42 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 15. Corporate Activities
Subchapter C. Bank Offices
7 TAC §15.42

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendment to §15.42, concerning establishment and closing of a branch office without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1562). The amended rule will not be republished. The amendment is proposed to streamline and clarify the requirements concerning relocation of bank branch offices within a one-mile radius.

Under current rules, banks wishing to relocate a branch must file an application and receive approval by the banking commissioner, regardless of the distance of relocation. These requirements are inconsistent with and more burdensome than corresponding requirements imposed by federal banking regulators. In addition, the burdensomeness of the current requirements effectively encourages banks desiring to relocate a branch to circumvent the rules by opening a new branch and then closing the old branch soon after. These amendments provide that for relocations within a one-mile radius, only notice and a nominal filing fee are required. Banks seeking to relocate a branch outside a one-mile radius would follow the procedures for closing and opening a branch.

The department received one comment in support of the proposed amendment from

the Independent Bankers Association of Texas.

The amendment is proposed under Finance Code, §32.203(b), which provides that the commission may adopt rules establishing standards for the approval of branch offices.

Finance Code, §203.001 is affected by the proposed amended section.

§15.42. Establishment and Closing of a Branch Office.

(a) Forms. If a state bank wants to establish and operate a branch office in this state or an interstate branch office pursuant to Finance Code, §32.203 and §203.001(a), then a branch application must be completed and filed on forms prescribed by the department. An application for an interstate branch must also provide information regarding applicable host state law and evidence of compliance with the law. Eligible banks may file an expedited application pursuant to §15.3 of this title (relating to Expedited Filings).

(b) Filing. The banking commissioner will issue a written notice as required by §15.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Public notice.

(1) Within 14 days prior to or 14 days after the initial submission of its

application, the applicant must publish notice of the application, as required by §15.5 of this title (relating to Public Notice), in the community of the proposed branch.

(2) The notice must comply with the content requirement of §15.5(b) of this title and include the proposed location of the branch or service area.

(3) With respect to an application to establish an interstate branch office pursuant to Finance Code, §32.203 and §203.001(a), the applicant must inform the department of the publication requirements in the host state for the banking commissioner to determine, pursuant to §15.5(e) of this title, whether those requirements satisfy the publication requirements of this subsection.

(d) Public comment and protest. For 14 days after publication of notice, or longer if the banking commissioner allows more time for good cause shown, the public may submit written comments or protests regarding the application. There is no fee or cost for submitting a comment, but persons commenting are not entitled to further notice of or participation in the branch application proceedings. Each protesting party has the rights and responsibilities set forth in subsections (f) and (g) of this section.

(e) Criteria for branch approval: "Significant supervisory or regulatory concerns."

(1) To determine whether there are significant supervisory concerns regarding a proposed branch, the banking commissioner will consider the financial condition of the applicant, the financial effect of the branch on the applicant, the management abilities of the applicant, and the history and prospects

of the applicant and its affiliates regarding fulfillment of responsibilities to regulatory agencies and to the public, including, but not limited to, the responsibility of the applicant to meet the credit needs of its entire community pursuant to the Community Reinvestment Act (CRA), 12 United States Code, §2901 et seq. An application will ordinarily be denied if the applicant is in less than satisfactory financial condition as of its most recent examination or has a less than satisfactory rating regarding compliance with CRA.

(2) To determine whether there are significant regulatory concerns regarding a proposed branch, the banking commissioner will consider the need to maintain a sound banking system. The banking commissioner will follow the principles that the marketplace normally is the best regulator of economic activity, and that healthy competition promotes a sound and more efficient banking system that serves customers well. Accordingly, absent significant supervisory concerns, the general policy of the banking commissioner is to approve applications to establish and operate branches, provided that approval would not otherwise violate the provisions of federal or state law (including any requirements for federal banking agency approval).

(3) In determining whether there are significant supervisory or regulatory concerns as set forth in paragraphs (1) and (2) of this subsection, the banking commissioner will consider written material in the record, including the application, comments on file, protests on file, and any replies of the applicant, the department's files as they relate to the current financial condition of the applicant, and any data that the banking commissioner may properly

officially notice. Specifically, the banking commissioner will approve a branch if:

(A) the department's files do not indicate significant regulatory concerns as they relate to the current financial condition of the applicant, including but not limited to its capital, asset quality, management, earnings and liquidity (these files are confidential pursuant to the Finance Code, Chapter 31, Subchapter D, and rules adopted pursuant to the Finance Code, are not open or available to either the applicant or a protesting party or to the public);

(B) the costs of establishing the proposed branch office, including costs of purchasing or leasing the branch site, necessary furnishings, staffing and equipment and the effect of these costs do not significantly affect the operations of the applicant as a whole;

(C) the projected earnings appear reasonable and sufficient to support expenses attributable to the branch without jeopardizing the safety and soundness of the applicant;

(D) the depth and quality of management of the applicant and the proposed branch is sufficient to justify a belief that the bank will operate in compliance with the Finance Code;

(E) the bank has demonstrated compliance with CRA as determined by the rating assigned in the applicant's most recent CRA evaluation;

(F) the applicant has demonstrated a responsiveness to recommendations made in past state and federal bank examination reports and the

applicant has generally been operated in substantial compliance with all applicable state and federal laws; and

(G) the banking commissioner, in the exercise of discretion, determines there are no areas of general supervisory concern.

(4) The banking commissioner will direct the department to assemble, evaluate, and make a recommendation regarding all relevant documentation and data as set forth in this subsection within 30 days after the application is complete and accepted for filing, or expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur. If a hearing is granted pursuant to subsection (g) of this section, then the banking commissioner will request the administrative law judge for the Finance Commission of Texas (administrative law judge) to discharge this function through the hearings process. Portions of the assembled record that are confidential pursuant to the Finance Code, Chapter 31, Subchapter D, must be segregated and clearly marked as confidential.

(5) If no hearing is granted, the banking commissioner will either approve, conditionally approve, or deny the application on or before the 30th day after receipt of the department's recommendation.

(f) Protest.

(1) A person may initiate a protest by submitting a written notice of intent to protest the application with the department within the time period allowed by subsection (d) of this section, accompanied by the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees). If the protest

is untimely, the filing fee will be returned to the protesting party. If the protest is timely, the department will notify the applicant of the protest and mail or deliver a complete copy of the non-confidential sections of the application to the protesting party on or before the 14th day after receipt of the protest or the application, whichever occurs later.

(2) A protesting party must file a detailed protest responding to each substantive statement contained in the non-confidential sections of the application within 20 days after the protesting party receives the application from the department. The protesting party's response must indicate whether each substantive statement is admitted or denied. The applicant must file a written reply to the protesting party's detailed response on or before the tenth day after the response is filed. Both the protesting party's response and the applicant's reply must be verified by affidavit and certify that a copy was served upon the opposing party. When applicable, statements in the response and in the reply may be supported by references to data available in sources of which official notice may properly be taken. Comments received by the department and any replies of the applicant to the comments will be made available to the protesting party.

(3) The banking commissioner may extend any time period set forth in this subsection for good cause shown. Good cause includes, but is not limited to, failure of the department to furnish required documentation, forms or information within a reasonable time to permit its effective use by the recipient, or failure of a party to timely serve a filed document on an opposing party. The date a document is

actually received by the department is its filing date and not the date it is mailed. Failure to timely file a required document is considered an abandonment of the application or protest, as applicable. Rule 21a, Texas Rules of Civil Procedure, will govern methods and manner of authorized service and the computation of time periods under this subsection.

(g) Hearing.

(1) Pursuant to the Finance Code, §32.203, the banking commissioner may not be compelled to hold a hearing prior to granting or denying approval to establish a branch.

(2) In the exercise of discretion, the banking commissioner may consider granting a hearing on a branch application at the request of either the applicant or a protesting party. The banking commissioner may order a hearing even if no hearing has been requested by the parties. A party requesting a hearing must indicate with specificity the issues involved that cannot be determined on the basis of the record compiled pursuant to subsection (e) of this section and why the issues cannot be so determined. The request for hearing and the banking commissioner's decision with regard to granting a hearing will be made a part of the record.

(3) If a hearing is not requested or if a request for hearing is denied, the banking commissioner will consider the application in the manner set forth in and solely on the basis of the written record established pursuant to subsection (e) of this section.

(4) The administrative law judge will enter appropriate order(s) and conduct a

hearing within 30 days after the date a hearing is granted, or as soon thereafter as is reasonably possible, under Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings) and the Administrative Procedure Act (Texas Government Code, Chapter 2001). The administrative law judge may require submission of written and prefiled testimony. Evidence will not be received on matters not in dispute. The administrative law judge will not consider issues or evidence that are not relevant to the standards set forth in subsection (e) of this section or that are not supported by the application, response, or reply.

(5) A proposal for decision, exceptions and replies to the proposal for decision, the final decision of the banking commissioner, and motions for rehearing are governed by Chapter 9 of this title.

(h) Beginning operations. Any activity approved pursuant to this section must commence within 18 months from the date of approval unless the banking commissioner extends that date in writing. Approval will automatically expire 18 months from the date of approval if no extension is granted.

(i) Emergency branches. The banking commissioner may authorize banks to establish temporary branch locations in the event of an emergency as defined by the Finance Code, §37.001. The procedures set forth in subsections (c), (d), (f) and (g) of this section do not apply to:

(1) situations in which the banking commissioner has authorized a temporary branch location because of an emergency; or

(2) branch applications made as a part of a transaction for the purpose of assuming all or a portion of the assets and liabilities of any financial institution deemed by the banking commissioner to be in hazardous condition.

(j) Branch relocation. A bank may relocate a branch within a one-mile radius by submitting a completed written notice on a form prescribed by the banking commissioner and tendering the required filing fee pursuant to §15.2 of this title. A bank may relocate the branch immediately after the banking commissioner notifies the bank in writing that the required fee has been paid and the notice is complete and accepted for filing.

(k) Closing a branch. Before closing an approved branch, a bank must comply with the notice requirements of federal law, and provide the department with a copy of the branch closing notice filed with the appropriate federal banking regulator simultaneously with its filing. Once a bank closes a branch the bank cannot reopen the branch except upon application for a new branch in compliance with this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §15.2 and §15.3 Concerning Filing and Investigation Fees and Expedited Filings, respectively

PURPOSE: Amendment to §15.2 reduces the filing fee from \$2,000 to \$200 for branch relocations within a one-mile radius. Amendment to §15.3 deletes the provision concerning expedited filings for branch relocations of less than one mile.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §15.2 and §15.3. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §15.2 and §15.3 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 15. Corporate Activities
Subchapter A. Fees and Other Provisions
of General Applicability
7 TAC §15.2 and §15.3***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §15.2, concerning filing and investigation fees, and §15.3, concerning expedited filings without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1561). The amended rules will not be republished. The amendments to §15.2 and §15.3 conform to an amendment of 7 TAC §15.42(j), concerning relocation of bank branch offices.

Current rules provide that branch relocations within a one-mile radius may be filed with an expedited status, provided several conditions are met. The current fee for filing an application for a branch relocation is \$2,000, or \$1,000 if filed under expedited status. Under the amendment to 7 TAC §15.42(j), filings for branch relocations within a one-mile radius are effective immediately upon the banking commissioner's acknowledgement of receipt of the reduced filing fee of \$200 and the form prescribed by the banking commissioner. The amendment to §15.2 reduces the filing fee from \$2,000 to \$200 for branch relocations within a one-mile radius. The amendment to §15.3 deletes the provision concerning expedited filings for branch relocations of less than one mile.

The department received two comments in support of the proposed amendments from the Independent Bankers Association of Texas and Comerica Bank.

The amendments are proposed under Finance Code, §32.203(b), which provides that the commission may adopt rules establishing standards for the approval of branch offices.

Finance Code, §203.001, is affected by the proposed amended sections.

§15.2. Filing and Investigation Fees.

(a) Types of fees. Subsection (b) of this section contains filing fees for specified applications and notices filed with the department, and subsection (c) of this section requires a fee for protesting an application. These fees are due at the time of filing the application or protest. Subsection (d) of this section requires an investigation fee to be paid in certain cases once an application has been accepted by the department for filing, and in other cases may require payment of investigative costs upon written request of the department. Pursuant to subsection (e) of this section, an applicant may seek waiver or reduction of required fees.

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) \$15,000 for an application for bank charter pursuant to Finance Code, §32.003, provided that the department will not require a filing fee for an application for a bank charter to be located in a low or moderate income area and where no other

ADOPTION OF AMENDMENTS TO 7 TAC §15.2 AND §15.3

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depository institution operates a branch or home office;

(2) a fee for an application for conversion to a state bank charter pursuant to Finance Code, §32.502, and §15.108 of this title (relating to Conversion of a Financial Institution into a State Bank), based on total assets as follows, except that the listed fee may be reduced by 50% if the application is eligible for expedited treatment pursuant to §15.103 of this title (relating to Expedited Filings):

(A) \$5,000 for an applicant with total assets of less than \$100 million;

(B) \$10,000 for an applicant with total assets of \$100 million or more but less than \$500 million;

(C) \$15,000 for an applicant with total assets of \$500 million or more but less than \$1 billion; or

(D) \$25,000 for an applicant with total assets of more than \$1 billion;

(3) a fee for an application to authorize a merger or share exchange (including an interstate transaction) pursuant to Finance Code, §32.302, and §15.104 of this title (relating to Application for Merger or Share Exchange), based on total combined assets as follows:

(A) \$7,500 for a merger or share exchange with combined assets of less than \$1 billion, or \$4,000 if the application is eligible for expedited treatment pursuant to §15.103 of this title; or

(B) \$15,000 for a merger or share exchange with combined assets of \$1 billion or more, or \$7,500 if the application is eligible for expedited treatment pursuant to §15.103 of this title;

(4) \$2,000 for each request to authorize an additional merger if more than one affiliated merger is to occur simultaneously;

(5) \$5,000 for an application to authorize a purchase of assets exceeding three times the amount of the bank's unimpaired capital and surplus (including an interstate transaction) pursuant to Finance Code, §32.401, and §15.105 of this title (relating to Application for Authority to Purchase Assets of Another Financial Institution), or \$2,500 if the application is eligible for expedited treatment pursuant to §15.103 of this title;

(6) \$2,500 for an application to authorize the sale of assets exceeding three times the amount of unimpaired capital and surplus (including an interstate transaction) pursuant to Finance Code, §32.405, and §15.106 of this title (relating to Application for Authority to Sell Assets);

(7) \$2,000 for an application to establish a branch office (including an interstate transaction) pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office), or \$1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title (related to Expedited Filings), provided that the department will not require a filing fee for an application for a new branch office to be located in a low or moderate income area and where no other

ADOPTION OF AMENDMENTS TO 7 TAC §15.2 AND §15.3

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depository institution operates a branch or home office;

(8) \$200 for a notice of branch relocation pursuant to §15.42(j) of this title;

(9) \$1,000 for a subsidiary notice letter pursuant to Finance Code, §34.103, plus an amount up to an additional \$3,500 if the banking commissioner notifies the applicant that additional information and analysis is required;

(10) \$10,000 for an application regarding acquisition of control pursuant to Finance Code, §33.002, and §15.81 of this title (relating to Application for Acquisition or Change of Control of State Bank), or \$5,000 if the applicant has previously been approved to control another state bank and no material changes in the applicant's circumstances have occurred since the prior approval;

(11) \$500 for a notice to change the home office to an existing branch office while retaining the existing home office as a branch office pursuant to Finance Code, §32.202, and §15.41(a) of this title (relating to Written Notice or Application for Change of Home Office);

(12) \$2,000 for an application to relocate the home office pursuant to Finance Code, §32.202, and §15.41(b) of this title, or \$1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title, provided that the fee is \$5,000 for an application to relocate the home office of a to-be-acquired charter without significant business activities;

(13) \$500 for a notice regarding establishment of an office pursuant to §3.91 of this title (relating to Loan Production Offices), or §3.93 of this title (relating to Deposit Production Offices);

(14) \$5,000 for an application for a foreign bank branch or agency license pursuant to Finance Code, §204.101, and §3.41(a) of this title (relating to Applications, Notices and Reports Related to Foreign Bank Branches and Agencies);

(15) \$1,000 for the statement of registration of a foreign bank representative office pursuant to Finance Code, §204.201, and §3.44(b) of this title (relating to Statements of Registration, Notices and Filings Related to Foreign Bank Representative Offices);

(16) \$300 for an application to amend a bank charter (certificate of formation) pursuant to Finance Code, §32.101;

(17) \$2,500 for an application to authorize a reverse stock split subject to the substantive provisions of §15.122 of this title (relating to Amendment of Certificate to Effect a Reverse Stock Split);

(18) \$2,000 for filing a copy of an application to acquire a bank or bank holding company pursuant to Finance Code, §202.001;

(19) \$1,000 for filing a copy of an application to acquire a nonbank entity pursuant to Finance Code, §202.004;

ADOPTION OF AMENDMENTS TO 7 TAC §15.2 AND §15.3

(20) \$100 for a request for a "no objection" letter to use a name containing a term listed in Finance Code, §31.005;

(21) \$1,000 for an application to authorize acquisition of treasury stock pursuant to Finance Code, §34.102, and §15.121 of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(22) \$1,000 for a request to authorize an increase or reduction in capital and surplus pursuant to Finance Code, §32.103; and

(23) \$500 for an application for release from a final removal or prohibition order pursuant to Finance Code, §35.0071.

(c) Filing fee for protest. A person or entity filing a protest to the application of another person or entity shall pay a fee of \$2,500 simultaneously with such protest filing. The purpose of the fee required under this subsection is to partially offset the department's increased cost of processing and reduce the costs incurred by the applicant resulting solely from the protest.

(d) Investigative fees and costs. An applicant for a bank charter or conversion to a state bank shall pay an investigation fee of \$10,000 once the application has been accepted for filing. If required by the banking commissioner, an applicant under another type of application or filing listed in subsection (b) of this section shall pay the reasonable investigative costs of the department incurred in any investigation, review, or examination considered appropriate by the department, calculated as provided by §3.36(h) of this title (relating to Annual Assessments and Specialty

Examination Fees). Such investigation fee or costs must be paid by the applicant upon written request of the department. Failure to timely pay the investigation fee or a bill for investigative costs constitutes grounds for denial of the submitted or accepted filing.

(e) Reduction or waiver of fees. Fees paid are nonrefundable and the banking commissioner shall charge fees on a consistent and nondiscriminatory basis. However, in the exercise of discretion, the banking commissioner may reduce, waive, or refund all or part of a filing fee, investigation fee, or bill for investigative costs if the banking commissioner concludes that:

(1) the application demonstrates that the fee creates an unreasonable hardship on the applicant; or

(2) the nature of the application will result in substantially reduced processing time compared to normal expectations for an application of that type.

(f) Severability. If any fee or cost recovery set forth in this section is finally determined by a court of competent jurisdiction to be invalid, that fee or cost recovery shall be severed from this section and the remainder of this section shall remain fully enforceable.

§15.3. Expedited Filings.

(a) An eligible bank may file an expedited filing according to forms and instructions provided by the department solely for the following matters, together with the fee required by §15.2 of this title (relating to Filing and Investigation Fees):

ADOPTION OF AMENDMENTS TO 7 TAC §15.2 AND §15.3
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(1) a branch application pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office); and

(2) home office relocations less than one mile with no abandonment of the community pursuant to the Finance Code, §32.202(c), and §15.41 of this title (relating to Written Notice or Application for Change of Home Office).

(b) Notwithstanding another provision of this section, the banking commissioner may deny expedited filing treatment to an eligible bank, in the exercise of discretion, if the banking commissioner finds that the filing involves one or more of the following:

(1) the proposed transaction involves significant policy, supervisory, or legal issues;

(2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;

(3) the proposed transaction will result in a fixed asset investment in excess of the limitation contained in the Finance Code, §34.002(a);

(4) the proposed transaction requires the approval of the banking commissioner under the Finance Code, §33.109(b);

(5) the proposed transaction involves an issue of parity between state and national banks pursuant to the Finance Code, §32.009;

(6) the proposed transaction significantly impacts the strategic plan of the bank;

(7) the proposed transaction will result in a decrease in capital below the levels required to meet the definition of "well capitalized" in 12 Code of Federal Regulations, §325.103;

(8) the proposed transaction will result in an abandonment of the community pursuant to the Finance Code, §32.202(d);

(9) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(10) the application is deficient and specific additional information is required, or the filing fee has not been paid.

(c) The department shall notify the applicant on or before the 15th day after receipt of the application if expedited filing treatment is not available under this section. Such notification of denial must be in writing and must indicate the reason why expedited treatment is not available. Notification is effective when mailed by the department and is not subject to appeal.

(d) If expedited filing treatment is denied, the applicant shall submit any additional fee required by §15.2 of this title on or before the fifth business day after receipt of the notice.

(e) Unless the applicant is otherwise notified by the department, an expedited filing is approved on the 15th day after the

later of the date the application is complete and accepted for filing, or expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur, unless a protest is filed. If a protest is filed, the application will be processed under §15.41 or §15.42 of this title, whichever is applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

4. Discussion of and Possible Vote to Take Action on the Adoption of Repeal of 7 TAC, §19.1 and §19.21 Concerning Trust Company Grandfathered Loans and Grandfathered Investments, respectively

PURPOSE: Repeal of §19.1 and §19.21 eliminates the provisions concerning loans, extensions of credit, and investments made by trust companies prior to September 1, 1997. The Department is unaware of any loans, extensions of credit, or investments currently in force that would be governed by these provisions.

RECOMMENDED ACTION: No comments were received regarding the repeal of §19.1 and §19.21. The Department recommends that the Commission approve adoption of the repeal without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the repeal of 7 TAC §19.1 and §19.21 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 19. Trust Company Loans and Investments
Subchapter A. Loans
Subchapter B. Investments
7 TAC §19.1 and §19.21

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts repeal of §19.1 and §19.21, concerning Grandfathered Loans and Grandfathered Investments, respectively, without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1563 and 41 TexReg 1564). The repealed rules will not be republished.

The department received no comments regarding the proposed repeal.

Repeal of 19.1 is adopted under Finance Code, §181.003, which provides the authority to adopt rules to implement and clarify the Texas Trust Company Act.

Finance Code §184.201 is affected by the proposed repealed sections.

§19.1. [Repealed]Grandfathered Loans. (a) Finance Code, §184.201, and this subchapter apply to loans or extensions of credit made on or after September 1, 1997. A loan or extension of credit existing prior to September 1, 1997, that was within a trust company's lending limit when made but is currently in excess of the limitations of Finance Code, §184.201, is not a violation of Finance Code, §184.201, or this subchapter, but is considered a nonconforming loan.

~~(b) Except as provided in subsections (c) —(e) of this section, a trust company may not renew, extend the maturity of, or restructure a nonconforming loan or extension of credit described in subsection (a) of this section unless the renewed, extended, or restructured loan complies with Finance Code, §184.201.~~

~~(c) Provided a trust company first makes a reasonable effort, consistent with safety and soundness principles, to collect a loan or extension of credit described in subsection (a) of this section at its maturity or to comply with subsection (b) of this section, a trust company may renew, extend the maturity of, or restructure the nonconforming loan or extension of credit unless:~~

~~——(1) additional funds are advanced by the trust company to the borrower;~~

~~(2) a new borrower replaces the original borrower; or~~

~~(3) the banking commissioner determines that the renewal, extension, or restructuring of the loan or extension of credit is designed to evade the trust company's lending limit.~~

~~(d) An extension, if any, of the maturity of the loan or extension of credit, in the aggregate, may not exceed the lesser of the original term of the loan or one year.~~

~~(e) Notwithstanding subsections (b) —(d) of this section, the banking commissioner may authorize terms for the renewal, extension, or restructuring of an existing loan or extension of credit on written~~

ADOPTION OF REPEAL OF 7 TAC §19.1 AND §19.21

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~~application if the banking commissioner concludes that:~~

~~(1) the excess loan or extension of credit is not prohibited by other applicable law; and~~

~~(2) the safety and soundness of the requesting trust company:~~

~~_____ (A) would not be adversely affected by renewal, extension, or restructuring of the existing loan or extension of credit; or~~

~~_____ (B) would be adversely affected if the loan or extension of credit is not renewed, extended, or restructured as requested.~~

~~(f) A lease financing transaction is considered an extension of credit for lending limit purposes. A lease financing transaction in existence prior to September 1, 1997, is therefore subject to this section.~~

Repeal of 19.21 is proposed under Finance Code, §181.003, which provides the authority to adopt rules to implement and clarify the Texas Trust Company Act.

Finance Code §184.101 is affected by the proposed repealed sections.

§19.21. _____ [Repealed] ***Grandfathered Investments.*** ~~(a) An investment in securities made prior to September 1, 1997, that was within a trust company's investment limit when made but exceeds the new limitations of Finance Code, §184.101(e) or (e), effective September 1, 1997, is not a violation of Finance Code §184.101, but is considered a nonconforming investment.~~

~~(b) Without the prior written approval of the banking commissioner pursuant to Finance Code, §184.101(e), a trust company may not make an investment on or after September 1, 1997, that is not in compliance with law, or that would increase an existing investment described in subsection (a) of this section and cause it to become further out of compliance with law.~~

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendment to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies

PURPOSE: Finance Code §182.011 and §182.012 were amended effective September 1, 2015, to materially revise the requirements for exemption as a family trust company. In general, prior to September 1, 2015, a trust company could obtain an exemption from certain otherwise applicable requirements if it restricted its client services to individuals related within the fourth degree of affinity or consanguinity to an individual who controls the trust company, and to certain of their related interests. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members.

The Commission amended 7 TAC §21.24 effective January 7, 2016, to implement the new statutory changes and provide guidance to both existing and future proposed family trust companies, as published in the January 1, 2016 issue of the *Texas Register* (41 TexReg 110). However, Department staff realized that the amended disclosure required to appear in the family trust company's certificate of formation was too broadly drafted, ostensibly permitting eligibility to all within the seventh degree of relationship of the named person, without regard to the shared common ancestor requirement.

Accordingly, §21.24(b)(2)(C) as amended explicitly limits permissible family members to descendants of the shared common ancestor.

RECOMMENDED ACTION: No comments were received regarding the proposed amendment to 7 TAC §21.24. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendment to 7 TAC §21.24 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 21. Trust Company Corporate
Activities
Subchapter B. Trust Company Chartering
and Powers
7 TAC §21.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to §21.24, concerning exemptions for family trust companies, without changes to the proposed text as published in the March, 4, 2016 issue of the *Texas Register* (41 TexReg 1564) and will not be republished.

Finance Code §182.011 and §182.012 were amended effective September 1, 2015, by Sections 5 and 6 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §§5-6), to materially revise the requirements for exemption as a family trust company. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members, see Finance Code §182.011(a).

To implement this change in law, §21.24 was amended effective January 7, 2016, to specify the information that must be contained in an application for exemption as a family trust company, and to make other conforming changes, see the January 1, 2016 edition of the *Texas Register* (41 TexReg 110). However, revised language in §21.24(b)(2)(C), regarding the required

inclusion and disclosure in an exempt trust company's certificate of formation of eligible family members, was drafted too broadly. As a result, the description of eligible clients could have been interpreted to include individuals that are not eligible members of the family as defined by §21.24(a)(1). The amendment to §21.24(b)(2)(C) clarifies that eligible family members must be descendants of the designated shared common ancestor.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code §181.003, which grants the commission authority to adopt rules to implement and clarify applicable law, and Finance Code §182.011(e)(2)-(4), which grants the commission authority to adopt rules (1) specifying the provisions of Finance Code, Title 3, Subtitle F that are subject to an exemption request, (2) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption, and (3) defining or further defining terms used in Finance Code §182.011.

§21.24. Exemptions for Family Trust Companies.

(a) Definitions. Definitions in Finance Code, §182.011(a-1), are incorporated herein by reference except for the term "family member." As used in this section and in Finance Code, Title 3, Subtitle F (the Trust Company Act), the following words and terms shall have the following

meanings, unless the context clearly indicates otherwise:

(1) "Family" means individuals who are related within the seventh degree of affinity or consanguinity to a shared common ancestor.

(2) "Family member" means each individual included in the definition of "family," provided that a foster child is considered the child of the foster parent and a person for whom a guardian was appointed before the person's 18th birthday is considered the child of the guardian. The term "family member" also includes the shared common ancestor.

(3) "Key employee" means the president of the trust company, any of its officers in charge of a principal business unit, division or function (such as administration or finance), an officer who performs a policymaking function for the trust company, or another person who performs similar policymaking functions for the trust company.

(b) Application for exemption.

(1) Pursuant to Finance Code, §182.011 and §182.012, a trust company may request in writing that it be exempted from specified provisions of the Trust Company Act, if it has only family clients, transacts business solely on behalf of family clients and their related interests, is wholly owned, directly or indirectly, legally or beneficially, by one or more family members, and does not hold itself out to the general public as a corporate fiduciary for hire.

(2) The application must:

(A) be accompanied by the appropriate filing fee required by §21.2 of this title (relating to Filing and Investigation Fees);

(B) specify the specific exemptions requested and the reasons or justification for requesting the exemptions; and

(C) include a copy of the trust company's certificate of formation containing, or a proposed amendment to the certificate of formation that would cause it to contain, the following statement in its purposes clause: "The sole purpose for which the trust company is organized is to act as a corporate fiduciary for accounts in which all beneficiaries are descendants of and related within the seventh degree of affinity or consanguinity to _____ (name of common ancestor), and their related interests to the extent permitted by the Texas Finance Code or applicable rules and regulations."

(c) Exemption. Subject to conditions or limitations being imposed by the banking commissioner, a family trust company may request exemption from the following provisions of the Trust Company Act:

(1) the requirement of Finance Code, §183.103(a), that five is the minimum number of directors, managers, or managing participants that can be specified in the certificate of formation, provided that the certificate of formation must specify the number of directors, managers, or managing participants, consistent with paragraph (2) of this subsection;

(2) the requirement of Finance Code, §183.103(a), that the number of directors, managers, or managing participants of a trust company cannot be less than five or more than 25, the majority of whom must be residents of this state, provided that the board of a trust company seeking exemption under this section must consist of not fewer than three or more than 25 directors, managers, or managing participants, at least one of whom must be a resident of this state;

(3) the restrictions of Finance Code, §183.109(a)-(c), regarding transactions with management and affiliates;

(4) the limitations of Finance Code, §184.002, on investment in trust company facilities;

(5) the limitations of Finance Code, §184.101, on securities investments, provided that the exemption request must address each limitation and the reasons for exemption separately;

(6) the restrictions of Finance Code, §184.102, regarding transactions in state trust company shares or participation shares;

(7) the limitations of Finance Code, §184.003, on other real estate investments; and

(8) the limitations of Finance Code, §§184.201-184.203, regarding lending limit and lease financing transaction restrictions, provided that no loans may be made from a trust company's minimum restricted capital amount.

(d) Notice to applicant. The banking commissioner shall issue a written notice as required by §21.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(e) Notice to clients. A family trust company which has been granted an exemption under subsection (c) of this section must provide each family client with a copy of the exemption granted by the banking commissioner. The trust company must maintain an acknowledged receipt of such notice in its files.

(f) Transition period for certain former family clients. Pursuant to Finance Code, §182.011(a-1)(1)(C) and (I), a family trust company may continue providing services to a former key employee or a formerly revocable trust that is no longer an eligible family client for a period of one year after the date of the disqualifying event. The banking commissioner may grant an extension of up to one year in response to a written request if the commissioner determines that:

(1) the trust company has acted diligently and in good faith in its efforts to terminate the disqualified relationship in a manner consistent with its fiduciary duties; and

(2) additional time is needed to avoid harm to the affected beneficiaries and appropriately discharge the trust company's fiduciary duties with respect to the disqualified relationship.

(g) Effect on existing family trust company. A family trust company with exemptions granted prior to September 1, 2015, under Finance Code, §182.011 and §182.012, is not required to take any action to preserve its exemption as a result of changes in law made by Acts 2015, 84th Leg., R.S., Ch. 250, §5. However, unless and until any such family trust company amends its certificate of formation to name a new shared common ancestor, the control person named in its certificate of formation is considered to be the shared common ancestor for purposes of determining eligibility of family members under Finance Code, §182.011, and this section.

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

6. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC, §21.43 Concerning Representative Trust Offices of Federally Chartered or Federally Insured Out-Of-State Banks, and §21.44 Concerning Representative Trust Offices of Out-Of-State Trust Companies and Uninsured State Banks

PURPOSE: New §21.43 establishes a more limited, non-discretionary registration regime applicable to a federally chartered or federally insured bank that wishes to establish a representative trust office in Texas. A registration submitted under new §21.43 will not be subject to banking commissioner approval or disapproval.

With respect to a state-chartered trust company or bank that is not federally insured, new §21.44 requires the institution to file a more detailed notice with the banking commissioner, together with its commitment to maintain capital at least equivalent to the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008 while it has an office in Texas. The proposed office can open on the 31st day after the notice filing unless the banking commissioner specifies otherwise. The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

RECOMMENDED ACTION: No comments were received regarding proposed new 7 TAC §21.43 and §21.44. The Department recommends that the Commission approve adoption of the new rules without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt new 7 TAC §21.43 and §21.44 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 21. Trust Company Corporate
Activities
Subchapter D. Trust Company Offices
7 TAC §21.43, §21.44

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §21.43 and §21.44, concerning representative trust offices of out-of-state trust institutions, without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1565) and will not be republished.

The new sections implement and clarify the requirements of Finance Code §187.201 and §187.202, which purport to govern the establishment in this state of a representative trust office by an out-of-state trust institution. A representative trust office is a limited purpose office for servicing existing clients and soliciting new clients, and for other purposes specified in Finance Code §187.201. Pursuant to Finance Code §187.202, a trust institution must register such an office with the banking commissioner, who may then allow the office to be established or postpone the office until the banking commissioner approves the office in writing.

With respect to federally chartered banks, the full extent of such approval authority could prevent or significantly interfere with the bank's exercise of its federally granted power to act as a fiduciary, which could result in federal preemption of any infringing requirements, see 12 U.S.C.

§25b and §1465. Further, because a state-chartered bank that is federally insured is subject to federal regulation as extensive as that applied to a federally chartered bank, requirements applicable to establishment of a representative trust office should be similar to those imposed on a federally chartered bank to avoid harming the viability of the state charter and to better support the dual banking system.

For these reasons, §21.43 establishes a limited, non-discretionary registration regime applicable to a federally chartered or federally insured bank that wishes to establish a representative trust office in Texas. Based on a simplified registration that identifies the bank and its proposed office location, accompanied by copies of any notice or application filed with a home state regulator or federal regulatory agency and proof that the bank has registered to do business in Texas pursuant to Finance Code §201.102, the office may be established immediately after filing. A registration submitted under §21.43 is not subject to banking commissioner approval or disapproval.

With respect to a state-chartered trust company or bank that is not federally insured, the depth and breadth of regulatory supervision can vary greatly depending on the jurisdiction of formation. With respect to these institutions, §21.44 fully implements Finance Code §187.202, enabling the banking commissioner to exercise judgment and discretion regarding whether such an out-of-state institution may establish a representative trust office in Texas.

A state-chartered trust company or uninsured bank that wishes to establish a representative trust office in Texas is required to file a notice with the banking commissioner containing the information specified by §21.44(a). Pursuant to §21.44(b), the institution must also submit its written agreement to, among other provisions, maintain tangible equity capital in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008 while it has an office in Texas. (Tangible equity capital is equal to the total of owner's equity, surplus, and undivided profits reduced by the total of intangible assets, see §21.44(a)(9).)

Under §21.44(c), the institution may commence business at its proposed office location on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner specifies an earlier or later date, except that the banking commissioner may extend the 30-day statutory period of review based on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the institution may not open the proposed representative trust office unless the banking commissioner approves establishment of the office in writing. The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

Finally, both §21.43(c) and §21.44(d) permit an institution that has lawfully established and is maintaining a representative trust office in Texas to establish additional representative trust offices in Texas without providing additional notice to the banking commissioner.

The Department received no comments regarding the proposed sections.

The new sections are adopted pursuant to Finance Code §181.003(a)(1), which authorizes the commission to adopt rules that are necessary or reasonable to implement and clarify the Texas Trust Company Act, codified as Finance Code, Title 3, Subtitle F.

§21.43. Representative Trust Offices of Federally Chartered or Federally Insured Out-of-State Banks.

(a) A bank authorized by its charter to conduct a trust business that maintains its principal office or a branch in this state in accordance with governing law may freely establish one or more representative trust offices in this state to the extent authorized by its primary regulator and governing law, except that a foreign bank must comply with Finance Code §204.106 in lieu of this section.

(b) An out-of-state bank authorized by its charter to conduct a trust business that has not established or acquired a branch in this state may establish a representative trust office in this state:

(1) if not chartered by a federal banking regulatory agency and not insured

by the Federal Deposit Insurance Corporation, only after complying with §21.44 of this title; or

(2) if chartered by a federal banking regulatory agency or insured by the Federal Deposit Insurance Corporation, after filing a written notice with the banking commissioner disclosing:

(A) the name of the institution and the address of its principal office;

(B) the physical address and the proposed opening date of the proposed office;

(C) a description of proposed activities at the office consistent with the limitations of Finance Code §187.201;

(D) copies of any regulatory notices, filings, or publications required by the trust institution's home state regulator and/or its primary federal regulator regarding the establishment of the office; and

(E) a copy of the institution's registration filed with the secretary of state pursuant to Finance Code §201.102.

(c) An out-of-state bank that has established and is maintaining a representative trust office in this state pursuant to subsection (b) of this section may establish additional representative trust offices in this state without providing notice to the banking commissioner.

§21.44. Representative Trust Offices of Out-of-State Trust Companies and Uninsured State Banks.

(a) Required notice. An out-of-state trust company or a state-chartered bank, the deposits of which are not insured by the Federal Deposit Insurance Corporation, may establish an initial representative trust office in this state after registration with the banking commissioner in accordance and in compliance with Finance Code §187.202 and this section, provided that the relevant home state regulator is a current party to regulatory information sharing and cooperation agreements with the banking commissioner that satisfy the requirements of Finance Code §181.303 and §187.301. At least 30 days before the proposed opening date of the proposed office, the institution must submit a written notice to the banking commissioner containing:

(1) the name of the institution and the address of its principal office;

(2) the physical address and the proposed opening date of the proposed office;

(3) a description of the proposed activities at the office consistent with the limitations of Finance Code §187.201;

(4) a copy of the institution's chartering document and evidence that the institution is active and in good standing;

(5) a copy of the resolution adopted by the board of the institution authorizing establishment of the proposed office;

(6) a copy of the institution's registration filed with the secretary of state pursuant to Finance Code §201.102;

(7) copies of any home state regulatory notices or filings required in connection with establishing the proposed office in this state;

(8) contact information for the institution's home state regulator;

(9) current financial statements evidencing tangible equity capital, defined as the total of owner's equity, surplus, and undivided profits reduced by the total of intangible assets, in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008; and

(10) the executed agreement required by subsection (b) of this section.

(b) Required agreement. The institution must submit its enforceable written agreement in the form provided by the banking commissioner, duly executed by an authorized officer of the institution, in which the institution agrees to:

(1) maintain tangible equity capital in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008, at all times during the period an office of the institution is maintained in this state;

(2) cooperate with and participate in examination at least once every 12 months at the discretion of the banking

commissioner, and to pay the costs of each such examination as provided by §17.22 of this title (relating to Examination and Investigation Fees); and

(3) provide prompt written notice to the banking commissioner:

(A) pursuant to Finance Code §187.306, at least 30 days before the effective date of the event, or, in the case of an emergency transaction, a shorter period before the effective date consistent with applicable state or federal law, of:

(i) a merger or other transaction that would cause a change of control with respect to the institution and require an application to be filed with the home state regulator;

(ii) a transfer of all or substantially all of the trust accounts or trust assets of the institution to another person; or

(iii) the relocation, closing, or other disposition of an office of the institution in this state.

(B) not later than 30 days after the institution receives notice of the imposition of or a proposed enforcement action or condition by the institution's home state regulator.

(c) When the office may open. The institution may commence business at the representative trust office on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner specifies an earlier or later date.

(1) The 30-day period of review may be extended by the banking commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the institution may establish the representative trust office only on prior written approval by the banking commissioner.

(2) The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests.

(d) Additional offices. An out-of-state trust company or uninsured state-chartered bank that has established and is maintaining a representative trust office in this state pursuant to this section may establish additional representative trust offices in this state without providing notice to the banking commissioner.

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

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §24.1 Concerning Registration of Cemetery Brokers

PURPOSE: Amendments to §24.1 would provide entities wishing to register as cemetery brokers with clear expectations regarding the times within which their registrations will be processed by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §24.1 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 24. Cemetery Brokers
7 TAC §24.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §24.1, concerning registration of cemetery brokers. The amendments are proposed to specify times for department processing of cemetery broker registrations.

In 2013, the Texas legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013 by the commission in the form of 7 TAC Chapter 24. Proposed amendments to §24.1 reduce from 45 days to 15 days the amount of time the department has to notify a registrant whether the registration is complete, and states that the department will process registrations within 30 days of the department's notification that the registration has been accepted for filing.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that entities wishing to register as cemetery brokers will have clear expectations

regarding the times within which their registrations will be processed by the department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov*.

The amended rule is proposed under Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the proposed amended rule.

§24.1. Registration.

(a) (No change.)

(b) The department shall notify each registrant within ~~1545~~ days either that the statement is complete and accepted for registration, or that the statement is

deficient. If the statement is deficient, the department shall specify the additional information that is required.

(c) On or before the 30th day after the date the department accepts the registration for filing, the banking commissioner will approve or deny the registration and advise the registrant in writing of the decision.

~~(e)~~(d) Registration as a cemetery broker is not transferable.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §24.4 Concerning Appeal of Delay in Registration Processing Times of Cemetery Brokers

PURPOSE: Proposed new §24.4 provides a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed new 7 TAC §24.4 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 24. Cemetery Brokers
7 TAC §24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §24.4, concerning appeal of processing time for cemetery broker registrations. The new rule is proposed to provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule is proposed to conform to Texas Government Code §2005.006.

In 2013, the Texas legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013 by the commission in the form of 7 TAC Chapter 24. Proposed new §24.4 establishes the process by which an entity seeking to register as a cemetery broker may complain to the banking commissioner if the department fails to comply with the registration processing times specified in §24.1.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit

anticipated as a result of enforcing the rule is that entities wishing to register as cemetery brokers will have a method for complaining to the banking commissioner if the processing deadlines are not met.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov*.

The new rule is proposed under Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the proposed amended rule.

§24.4. Appeal of delay in registration processing times.

(a) If the department does not process a registration within the time periods specified in §24.1 of this title, a registrant may file a written complaint with the banking

commissioner. The complaint must set out the facts regarding the delay and the specific relief requested. The department must receive the complaint on or before the 30th day after the date the banking commissioner approves or denies the registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding the complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review the written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon the complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify the complainant of the decision regarding the complaint on or before the 60th day after the date the commissioner receives the written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse all of the complainant's registration fees.

(g) A decision in a complainant's favor

under this section does not affect any decision by the banking commissioner to grant or deny a registration. The decision to grant or deny a registration is based upon applicable substantive law without regard to whether the department timely processed the registration.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, §31.18 Concerning When a Child Support Enforcement Application or Notice is Abandoned

PURPOSE: Amendments to §31.18 will clarify the conditions and procedures for determining and communicating that an application has been abandoned. The proposed amendments are intended to enhance the opportunity for communication between child support enforcement agency applicants and the Department. The anticipated result is that fewer applications for child support enforcement agencies will be abandoned.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §31.18 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 31. Private Child Support
Enforcement Agencies
Subchapter B. How Do I Register My
Agency to Engage in the Business of Child
Support Enforcement?
7 TAC §31.18***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §31.18, concerning when an application is abandoned. The amended rule is proposed to clarify the conditions and procedures for determining and communicating that an application has been abandoned.

The proposed amendments streamline and make consistent the procedures for the department to determine whether an application has been abandoned. The proposed amendments are intended to enhance the opportunity for communication between child support enforcement agency applicants and the department.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the amended rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amended rule is that fewer applications for

child support enforcement agencies will be abandoned.

For each year of the first five years that the amendments will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov*.

The amendments are proposed under Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the proposed amended section.

§31.18. When is an application ~~or notice~~ submitted by my agency abandoned?

(a) Subject to paragraph (b) of this section, the department must receive all information required to consider your application complete and to accept it for filing on or before the 61st day after the date the department receives your initial application.

(b) Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(c) After reviewing the information you provide in response to the department's request for additional information, the department may determine that still more information is required to consider your application complete and to accept it for filing. The department will notify you in writing if further information is required and specify the date by which the department must receive the information.

(d) If you do not provide the required information, the banking commissioner may determine that your application is abandoned, without prejudice to your right to file a new application.

(e) The banking commissioner will notify you in writing if your application is considered abandoned. The commissioner's determination is effective the date the department mails you the notice and may not be appealed. The department will not refund the fee you paid in connection with the abandoned application.

(a) If you provide all required information on or before the 61st day after your agency submits an application or notice, the banking commissioner will accept it. Prior to the end of the initial 60-day period, you may request an automatic 30-day extension of time to submit required information. An additional extension may be requested in writing if your request is

~~received prior to the expiration of the automatic extension. The additional extension will be granted only if the banking commissioner in the exercise of discretion finds that you have good and sufficient cause for the extension. The banking commissioner will mail notice of the decision to you within ten days of receipt of the request by the department.~~

~~(b) If you do not timely pay a fee or timely furnish information required by applicable law, rule, or request for additional information, then the banking commissioner may determine that your application or notice is abandoned. The banking commissioner will notify you in writing that it is abandoned.~~

~~(e) Any filing fees you paid related to an abandoned application or notice are refundable. Any filing fee you did not pay related to an abandoned application or notice remain due and payable from you to the department. If paid, the fee for cost of regulation will be refunded to you.~~

~~(d) If your application or notice is considered abandoned, you may file it again without prejudice. A new filing fee will be required.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC, §31.19 Concerning When and How a Private Child Support Enforcement Agency's Certificate of Registration Will be Issued and Mailed

PURPOSE: Amendment to §31.19 will clarify the time for the Department processing of private child support enforcement agency registrations. The proposed amendment reduces from 60 days to 45 days the time the Department will have to notify a registrant that its registration is approved or referred to the administrative law judge for notice and opportunity for hearing. The proposed amendment is intended to shorten and simplify the registration process for registrants seeking to engage in this business.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC §31.19 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 31. Private Child Support
Enforcement Agencies
Subchapter B. How Do I Register My
Agency to Engage in the Business of Child
Support Enforcement?
7 TAC §31.19***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §31.19, concerning how to register an agency to engage in the business of private child support enforcement. The amended rule is proposed to clarify the time for department processing of private child support enforcement agency registrations.

The proposed amendment reduces from 60 days to 45 days the time the department will have to notify a registrant that its registration is approved or referred to the administrative law judge for notice and opportunity for hearing. The proposed amendment is intended to shorten and simplify the registration process for registrants seeking to engage in this business.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the amended rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit

anticipated as a result of enforcing the amended rule is that the time for processing a registration of a private child support enforcement agency will be reduced.

For each year of the first five years that the amendment will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the proposed amended section.

§31.19. When and how will my agency's certificate of registration be issued and mailed?

(a) On or before the ~~45~~⁶⁰th day after the date your application is accepted for filing the banking commissioner will either:

(1) approve your application by issuing a certificate of registration for each location approved; or

(2) refer your application to the administrative law judge for notice and opportunity for hearing under Chapter 9 of this title.

(b) – (c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §31.20 Concerning What Remedy is Available If the Department Does Not Comply with the Private Child Support Enforcement Registration Processing Times

PURPOSE: Proposed new §31.20 establishes the process by which an entity seeking to register as a private child support enforcement agency may complain to the banking commissioner if the Department fails to comply with the application processing time periods specified in Subchapter B.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed new 7 TAC §31.20 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 31. Private Child Support
Enforcement Agencies
Subchapter B. How Do I Register My
Agency to Engage in the Business of Child
Support Enforcement?
7 TAC §31.20***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §31.20, concerning how to register an agency to engage in the business of private child support enforcement. The new rule is proposed to provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule is proposed to conform to Texas Government Code §2005.006.

Proposed new §31.20 establishes the process by which an entity seeking to register as a private child support enforcement agency may complain to the banking commissioner if the department fails to comply with the application processing time periods specified in Subchapter B.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the new rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit

anticipated as a result of enforcing the new rule is that entities seeking to register as private child support enforcement agencies will have a method for complaining to the banking commissioner if the processing deadlines are not met.

For each year of the first five years that the new rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov*.

The new rule is proposed under Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the proposed new section.

§31.20. What remedy is available if the department does not comply with the registration processing times?

(a) If the department does not process your registration within the time periods

specified in Subchapter B of this title, you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint on or before the 30th day after the date the commissioner approves or denies your registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding your complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review your written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon your complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your registration fees.

(g) A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your registration. The decision to grant or deny your registration is based upon applicable substantive law without regard to whether the department timely processed your registration.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, §35.18 Concerning How Long the Department Will Take to Process Registration of Check Verification Entities, and §35.19 Concerning What Remedy is Available If the Department Does Not Comply with the Registration Processing Times of Check Verification Entities

PURPOSE: Proposed new §35.18 states specific time periods within which the Department will process check verification entity registrations. Proposed new §35.19 establishes the process by which an entity seeking to register as a check verification entity may complain to the banking commissioner if the Department fails to comply with the registration processing times specified in proposed new §35.18.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rules in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed new 7 TAC §35.18 and §35.19 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 35. Check Verification Entities
Subchapter B. Registration of Check
Verification Entities
7 TAC §35.18 and §35.19

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §35.18 and §35.19, concerning registration of check verification entities. The new rules are proposed to specify times for department processing of check verification entity registrations, and to provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. New §35.19 is proposed to conform to Texas Government Code §2005.006.

Proposed new §35.18 establishes specific time periods within which the department will process registrations for check verification entities. Proposed new §35.19 establishes the process by which an entity seeking to register as a check verification entity may complain to the banking commissioner if the department fails to comply with the registration processing times specified in proposed new §35.18.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Mr. Bacon also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that entities wishing to register as check verification entities will have clear expectations regarding the times within which their registrations will be processed by the department, and will have a method for complaining to the banking commissioner if the processing deadlines are not met.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rules are proposed under Finance Code, §11.309(b), which provides the authority to adopt rules requiring check verification entities to register with the banking commissioner.

Finance Code, §11.309, is affected by the proposed new sections.

§35.18. How long will the department take to process my registration?

(a) On or before the 15th day after the date the department receives your registration form, the department will notify you in writing that:

(1) your registration form is incomplete and specify the additional information required before the department will accept your registration for filing; or

(2) your registration is complete and accepted for filing.

(b) On or before the 30th day after the date the department accepts your registration for filing, the banking commissioner will approve or deny your registration and advise you in writing of the decision.

§35.19. What remedy is available if the department does not comply with the registration processing times?

(a) If the department does not process your registration within the time periods specified in §35.18 of this title, you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint on or before the 30th day after the date the commissioner approves or denies your registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding your complaint that includes any facts on which the division relies to show that good cause

existed for exceeding the applicable time period.

(b) The banking commissioner will review your written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(c) The banking commissioner will determine, based upon your complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(d) The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(e) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your registration fees.

(f) A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your registration. The decision to grant or deny your registration is based upon applicable substantive law without regard to whether the department timely processed your registration.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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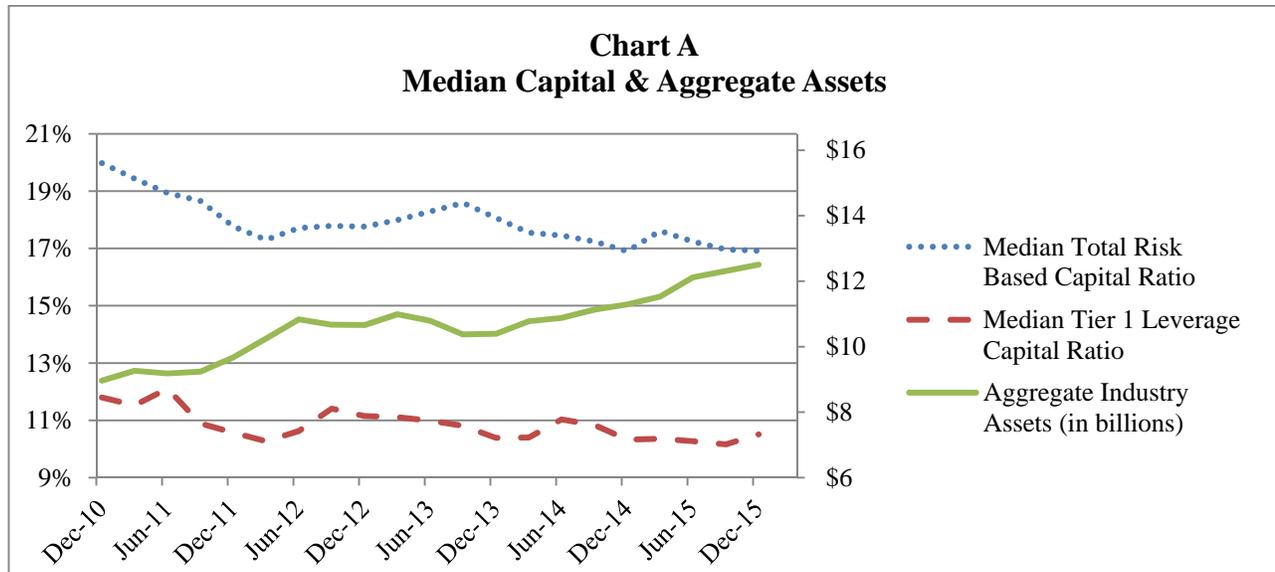
D.

**Department of Savings
and
Mortgage Lending**

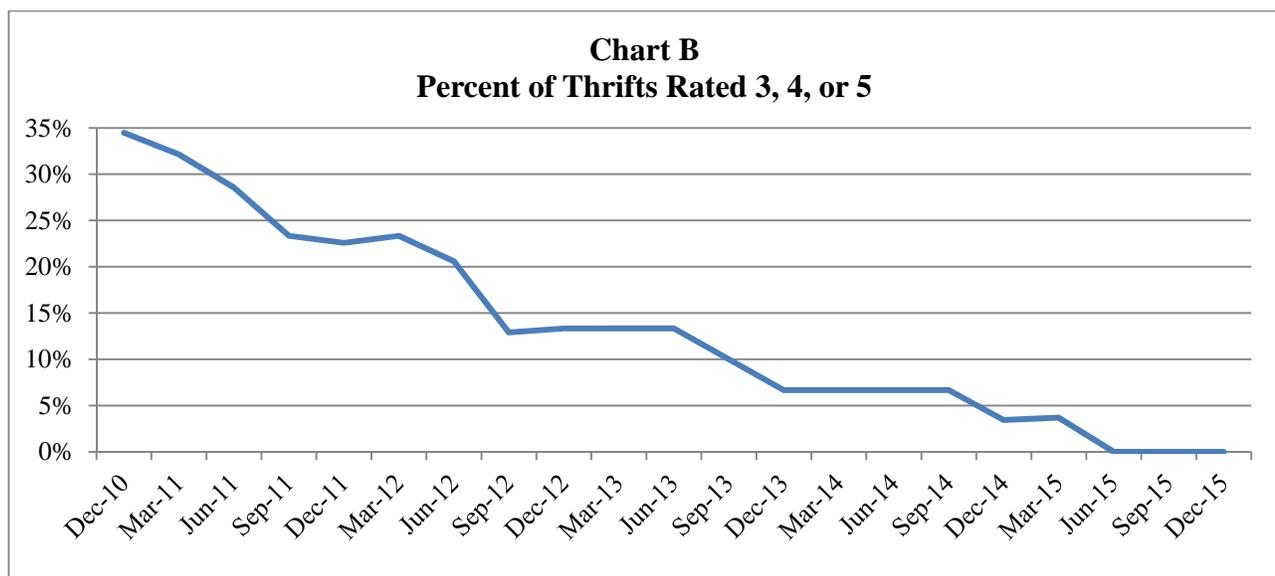
D. Texas Department of Savings and Mortgage Lending

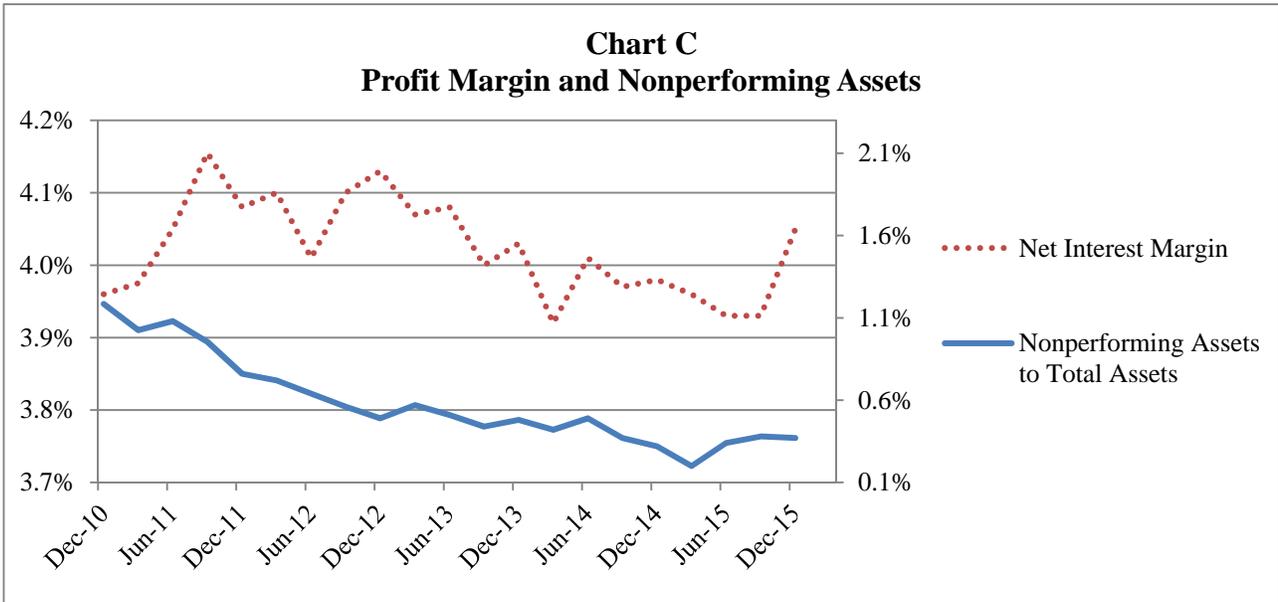
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status

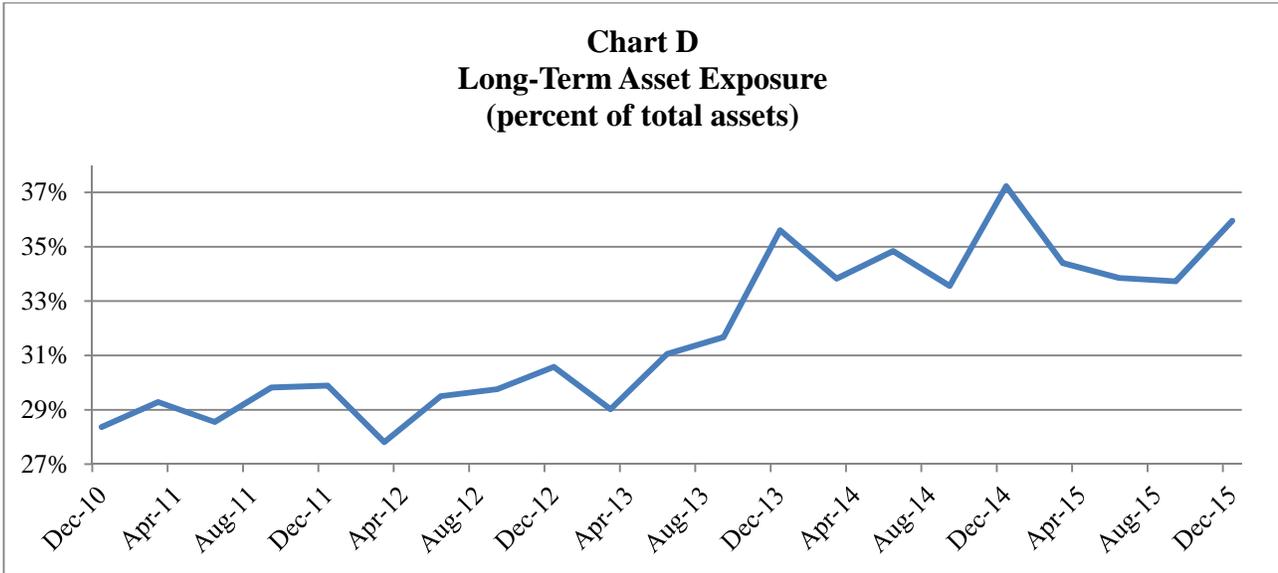


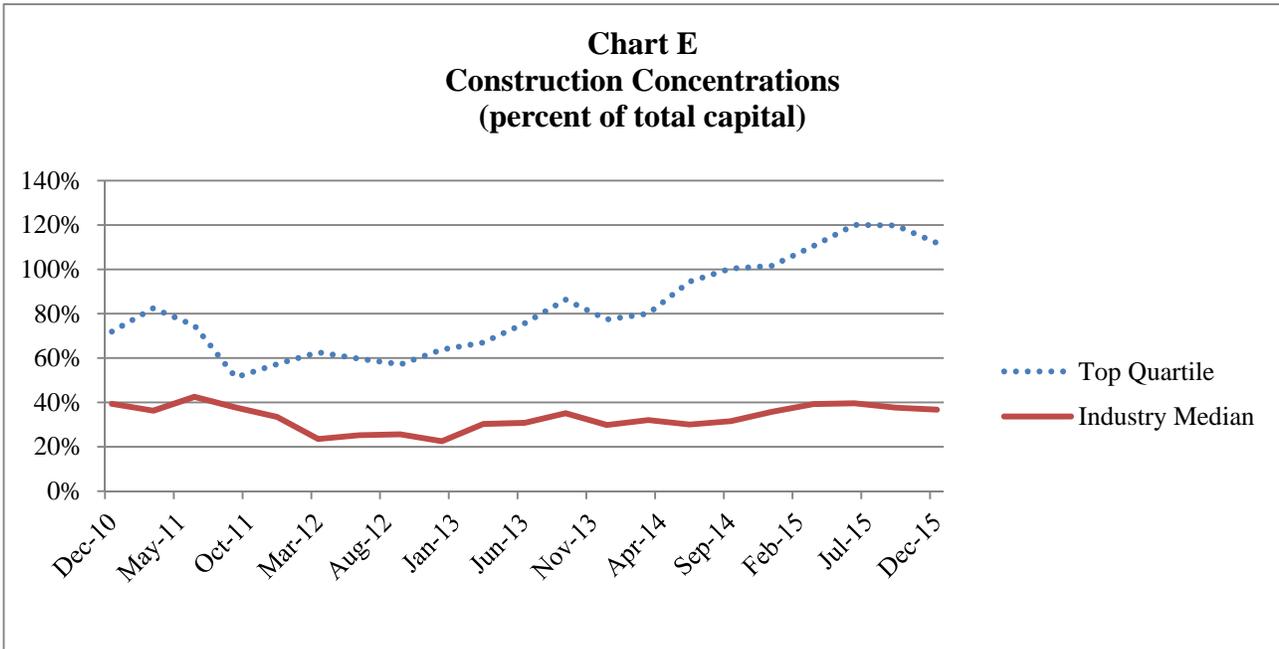
There are 27 state savings banks totaling \$13.6 billion in total assets. All are rated a Composite 1 or 2, with no outstanding public enforcement actions. The average asset size of the median state savings bank grew by 12% in calendar year 2015, to \$310 million. This continues a four year growth trend in the industry. The net interest margin (profit margin) increased notably in the last quarter of 2015, sufficient to cause an increase over the same period in 2014 to 4.05% from 3.98%. Growth in long-term, higher-yielding loans contributed to this increase. Nonperforming asset levels remain below pre-crisis levels at 0.37% of total assets. As a result of increased lending, risk-based capital ratios have declined slightly; however, leverage capital protection has increased slightly through retained earnings to 10.51%.



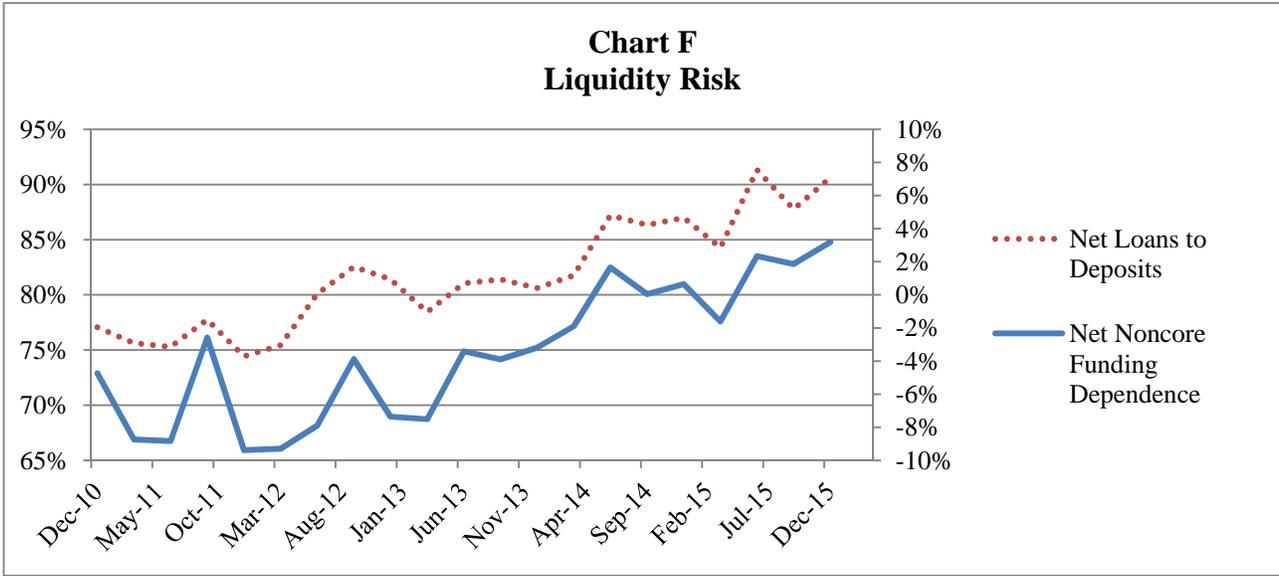


The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Market risk is generally increasing through robust long-term asset growth, though profit margins rebounded somewhat in the 4th quarter of calendar year 2015. Extension of assets continues to expose some charters to rising funding costs should interest rates rise significantly. In addition, the Department closely monitors construction lending concentrations, which vary widely throughout the industry. This type of concentration has been identified as a key risk indicator by the FDIC. The growing demand for construction lending in the expanding Texas economy can be observed in the top quartile of Texas thrifts, which have a median concentration of 112% of total capital, even after a slight decline in the 4th quarter of calendar year 2015.





Liquidity risk remains manageable, but is increasing in Texas thrifts, as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings. The median NNCFD Ratio has increased from 0.65% to 3.19% in the last four quarters, but is still considered manageable. Another indicator of liquidity risk is the loan-to-deposit ratio, which has grown from 86.98% to 90.63% over the same period.



b. Savings Bank Charter and Merger Activity

On September 29, 2015, an application was received regarding the merger of First Community Bank, N.A., Sugar Land, Texas, with and into Pioneer Bank, SSB, Dripping Springs, Texas. A related application was received on October 17, 2015, for JJL Associates G.P. FCH, LLC and related applicants, the controlling group of First Community Bank, N.A., to acquire majority

control of Pioneer Bancshares, Inc., parent holding company of Pioneer Bank, SSB. The applications have been approved and the merger became effective on February 29, 2016.

On February 5, 2016, an application was received for TransPecos Banks, Pecos, Texas, to convert from a Texas state commercial bank charter to a savings bank charter. The application remains under review.

c. Other Items

The 9th Annual Thrift Industry Day is scheduled for September 15, 2016 and will be held in Austin at the J.J. Pickle Commons Learning Center.

2. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 03/31/2016	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	8	n/a	
<i>CUSO</i>	3	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	82	n/a	
<i>Mortgage Company</i>	1,032	446	
<i>Mortgage Banker</i>	376	2,096	
<i>Mortgage Servicer</i>	151	n/a	
Totals	1,653	2,544	

The license renewal and reinstatement period ended February 29, 2016; any license that had not requested renewal or reinstatement expired. There were 103 company, 82 branch, and 2,567 individual licenses that expired. As of the second quarter 3,443 applications had been approved. For the first half of FY16, the Department received 4,134 applications and 38,309 other related filings – record amendments, sponsorship changes, etc.

b. Mortgage Examinations

During the first half of FY16 a total of 232 examinations were conducted covering 2,695 individual licensees. The number of examinations is higher when compared to the same period in FY15. The number of individual licensees examined decreased by 49%. The decrease in the number of licensees examined is a direct result of smaller entity operations being examined during the first six months of FY16. The current examination cycle is approximately 33 months.

Below is a breakdown of mortgage examination results by compliance rating for the first half of FY16. As shown in the chart below, the stratification of examination ratings during the past six months reflects a slight improving trend in the combined 1 & 2 rating categories when compared to FY15. There have been no 5 rated examinations issued during the first half of FY16.

Mortgage Examination Compliance Ratings											
	# Mortgage Exams	Rated "1"	%	Rated "2"	%	Rated "3"	%	Rated "4"	%	Rated "5"	%
Fiscal Year 2014											
9/1/13 - 8/31/14	366	74	20%	160	44%	113	31%	19	5%	0	0%
Fiscal Year 2015											
9/1/14 - 8/31/15	403	38	9%	175	44%	132	33%	51	13%	4	1%
Fiscal Year 2016											
9/1/15 -2/29/16	232	23	10%	113	49%	77	33%	19	8%	0	0%

c. Consumer Complaints/Legal Issues

During the first half of FY16, a total of 488 consumer complaints were received. This represents an 18% increase when compared to the same period in FY15 with loan servicing complaints continuing to account for approximately 61% of the total number of complaints received. As of February 29, 2016, there were a total of 90 open consumer complaints with 93% of the complaints being aged less than 90 days.

d. Legal

SOAH Hearings - Recently Held:

01/05/2016 *Denial of License*

SOAH Docket No. 450-16-0675; Department of Savings and Mortgage Lending v. Colin Quinn Maples. In this case, the Department's staff proposed to deny the application of Mr. Maples for a residential mortgage loan originator license on the grounds that in 2002, Mr. Maples entered a plea of guilty to felony theft and was placed on deferred-adjudication community supervision, and because he failed to disclose that offense on his application as required in the minimum standards for licensure. The Administrative Law Judge concluded that the Department's staff proved that Mr. Maples was not entitled to have his application granted, and recommended that the Department deny the application. After receipt of the ALJ proposal for decision the Commissioner entered her final decision. On March 30, 2016, the applicant filed a motion for rehearing.

01/21/2016 *Denial of License*

SOAH Docket No. 450-16-1422; Department of Savings and Mortgage Lending v. Crystal Wilburn. In this case, the Department's staff proposed to deny the application of Ms. Wilburn for a residential mortgage loan originator license on the grounds of lack of good moral character and failure to demonstrate financial responsibility. A hearing was held on January 21, 2016. The Department is awaiting the issuance of a proposal for decision in this matter by the Administrative Law Judge.

02/18/2016 *Hearing Scheduled on Appeal of Order to Cease and Desist*

SOAH Docket No. 450-16-1891; Department of Savings and Mortgage Lending v. Core Advisory Group. Hearing was held on February 18, 2016 on a default basis. The Administrative Law Judge

concluded that the Order to Cease & Desist should be affirmed. The ALJ's proposal for decision was issued on March 28, 2016.

SOAH Hearings - Upcoming:

02/19/2016 *Hearing Scheduled on Appeal of License Denial*

SOAH Docket No. 450-16-2838; Department of Savings and Mortgage Lending v. Sammy Trantham. In this case, the Department's staff denied the application of Mr. Trantham for a residential mortgage loan originator's license on the grounds of lack of good moral character. Hearing is scheduled to be held on April 21, 2016. Parties are to engage in discovery.

Gift Reporting:

On February 15, 2016 the State Regulatory Registry, LLC provided a 2016 NMLS Conference Scholarship, covering registration and hotel and travel. The amount of the scholarship was \$1,948.

Litigation:

03/17/2016 *Lawsuit Filed*

Cause No. D-1-GN-16-001194; Catherine Sims v. Texas Department of Savings and Mortgage Lending, in the 201st Judicial District Court of Travis County, Texas

In this case, Ms. Sims is contesting the denial of her license, claiming the Department's decision was not reasonably supported by substantial evidence. The Texas Attorney General's Office is representing the Department and an Answer is due to be filed by April 11, 2016.

e. Other Items

Mortgage Industry Advisory Committee – March 2, 2016 Meeting

On March 2, 2016, MIAC held a regularly scheduled meeting. At this meeting the Department provided updates on the Department's activities and answered questions from the committee members. Additionally, the Department presented proposed amendments to mortgage rules. MIAC took a record vote and agreed that the proposed amendments to the rules should be presented to the Finance Commission for publication to the *Texas Register* for comment. The agenda for the meeting was as follows:

AGENDA

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
 - Licensing – Director of Licensing
 - Examinations and Complaints – Director of Mortgage Examinations
 - Enforcement – General Counsel
3. Rule Review – Proposed Amendments (Voting Item)
4. General Discussion:
 - Strategic Plan
 - Implementation of TRID
 - Committee Discussion Topics
5. Upcoming Meetings:
 - July 6, 2016
6. Adjourn - Commissioner

Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2016 Target	2016 Actual	2016 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 BANK EXAMINATION					
1. THRIFT EXAMINATION AND SUPERVISION					
Quarter 1	22	3	3	13.64%	*
The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
Quarter 2	22	4	7	31.82%	*
The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
2-1-1 MORTGAGE LICENSING					
1. # NEW LIC/ORIGINATORS APPROVED					
Quarter 1	6,500	1,793	1,793	27.58%	
Quarter 2	6,500	1,650	3,443	52.97%	
2-1-2 MORTGAGE EXAMINATION					
1. NUMBER OF LICENSEES INSPECTED					
Quarter 1	3,600	1,077	1,077	29.92%	
Quarter 2	3,600	1,618	2,695	74.86%	*
Two large mortgage banker examinations were completed in the second quarter of FY 2016 which accounted for 28% of the total number of licensees examined for the period. This type of concentration may continue over the remaining quarters of FY 2016.					
3-1-1 COMPLAINT AND INQUIRY PROCESS					
1. # COMPLAINTS PROCESSED					
Quarter 1	900	248	248	27.56%	
Quarter 2	900	261	509	56.56%	*
Twenty complaints were received on one entity/individual associated with a misleading lending practice. More complaints on this entity may be received in the 3rd quarter as the matter became public and has been in the press.					

*Varies by 5% or more from target.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Second quarter of FY16 has been closed out. The financials are attached elsewhere in the package. As of the end of second quarter, the revenues are at 130% of budget, due to higher volume of penalties and license fees, and the expenditures at 90% of budget, due to lower personnel and travel expenses.

b. Staffing

As of April 1, 2016, the Department was staffed at 52 regular full time employees and 1 regular part-time employee with 64 FTEs available.

The Network Analyst position was closed without filling it, due to the lack of qualified applicants. The Department has contracted with Vintage IT Services to provide Managed IT services, including system support, system monitoring, and help desk.

The Department's other vacant positions are in different stages of the hiring process.

c. Other Items

None

5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 Texas Administrative Code (TAC), Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 Concerning Savings and Loan Associations, Resulting from Rule Review.

PURPOSE: The purpose of the adopted amendments and repeals is to implement changes resulting from the commission's review of Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 under Texas Government Code, §2001.039. Amendments to Chapter 51 are adopted to update terminology, provide for improvements in application flexibility and efficiency, make gender neutral references and to improve wording and grammar. Amendments to Chapter 53 are adopted to include corrections of wording, capitalization, and punctuation; enhance consistency between various application and hearing processes; gender neutralization of a reference to the commissioner, the removal of a restriction on extensions of approved offices, and the addition and revision of language to provide enhanced clarity. Amendments to Chapter 57 are adopted to include clarifying language, gender neutralization of references to the commissioner, and efforts to enhance consistency between various application and hearing processes. Chapter 59 has only one section or rule in it concerning Foreign Building and Loan Associations and repeal is adopted, as it is unnecessary by federal law. Amendments to Chapter 61 are adopted to include the removal of unnecessary words and correction of the names of agencies and the title of the Texas Government Code. Amendments are adopted to Chapter 63 to include improvements in word choice, reductions in fees, remove unnecessary words, provide updates to covered corporate documents, clarification, gender neutralization of a reference to the commissioner, and replacement of public information request fees with those prescribed by the Texas Attorney General. Repeal of Sections 63.10 and 63.14 is adopted as such fees are deemed unnecessary for savings and loan associations. Amendments are adopted to Chapter 64 to addresses the proper location of books and records of a savings and loan association. The adopted amendments improve word choice and punctuation, and expand on the permissibility of offsite electronic backups. Amendments are adopted to Section 64.10(b)(1) to modify the internet contact information for the department and to add physical, telephone and fax contact information for consumer complaints and to correct the name of the department. Amendments are adopted to Chapter 65 to include the removal of unnecessary words, clarifications of terms and phrases, promote gender neutrality, and provide updates to make rules consistent with prevailing guidance and regulations applicable to other depository charters. Repeal of Section 65.22 is adopted as it is covered in section 65.11. Amendments are adopted to Chapter 67 to include revisions to improve clarity; corrections of grammar, punctuation, and titles; remove an approval requirement for deposit forms; and remove an unnecessary reference to a statute. Repeal of Sections 67.4 and 67.14 are adopted as they are dated and unnecessary. Amendments are adopted to Chapter 69 to include clarifications and gender neutralization. Amendments are adopted to Chapter 71 to include correction of department name and references, neutralization of gender references, update criteria for presumption of control, clarify information relating to lawsuits, and enhance the availability of a hearings process for change of control applications relating to savings and loan associations. Amendments are adopted to Chapter 73 to include gender neutral references to the commissioner, remove unnecessary words, correct the department name, and provide clarifying language.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the amendments and repeals in 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73.

RECOMMENDED MOTION: I move that we adopt the amendments and repeals to 7 TAC Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73.

Title 7. Banking and Securities***Part 4. Texas Department of Savings and Mortgage Lending******Chapter 51. Charter Applications******Chapter 53. Additional Offices******Chapter 57. Change of Office Location or Name******Chapter 59. Foreign Building and Loan Association******Chapter 61. Hearings******Chapter 63. Fees and Charges******Chapter 64. Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints******Chapter 65. Loans and Investments******Chapter 67. Savings and Deposit Accounts******Chapter 69. Reorganization, Merger, Consolidation, Acquisition, and Conversion******Chapter 71. Change of Control******Chapter 73. Subsidiary Corporations***

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), regarding savings and loan associations, adopts 7 Texas Administrative Code: Chapter 51, amendments concerning Charter Applications without changes; Chapter 53, amendments concerning Additional Offices without changes; Chapter 57, amendments concerning Change of Office Location or Name without changes; Chapter 59, repeal concerning Foreign Building and Loan Association §59.1 without changes; Chapter 61, amendments concerning Hearings without changes; Chapter 63 amendments concerning Fees and Charges and repeal of §63.10 and §63.14 without changes; Chapter 64, amendments concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints with changes to §64.10(b)(1) as noted below; Chapter 65, amendments concerning Loans and Investments and repeal of §65.22 without changes; Chapter 67, amendments concerning Savings and Deposit Accounts and repeal of §67.4 and §67.14 without changes; Chapter 69, amendments concerning Reorganization, Merger, Consolidation, Acquisition, and Conversion without changes; Chapter 71, amendments concerning Change of Control

without changes; and Chapter 73, amendments concerning Subsidiary Corporations without changes, to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1567) and will not be republished.

In general, the purpose of the adoption regarding these rules is to implement changes resulting from the commission's review of the savings and loan chapters, under Texas Government Code §2001.039.

In Chapter 51, the adopted amendments include updates in terminology, improvements in application flexibility and efficiency, gender-neutralization of references to the Commissioner, and improvements in wording and grammar.

Section 51.1 addresses the application process for the incorporation of a savings and loan association. The adopted amendments to this section update terminology to match Business Organizations Code, generalize the format of information provided to the agency, make references to the Commissioner gender neutral, and provide a grammatical clarification.

Section 51.2 addresses the savings and loan charter application form and initial

review process. The adopted amendments make references to the Commissioner gender neutral and clarify that the initial application investigation may take the form of an onsite review.

Section 51.3 addresses the hearing process for savings and loan charter applications. The adopted amendment clarifies that an application must be substantially complete before the deadline to set a hearing can be determined.

Section 51.4 addresses the publication of notice of a charter application. The adopted amendment removes the form prescribed in the rule and substitutes that the format must be acceptable to the Commissioner. The agency maintains templates for standard applications that are available to any party on request.

Section 51.5 addresses the notice to other associations of a savings and loan association. The adopted amendment clarifies the notice is permissible to parties outside the immediate geographic area, consistent with the agency's practice to provide notice statewide.

Section 51.6 addresses the proof of publication of a notice of a savings and loan charter application. The adopted amendment removes unnecessary words relating to another section of this title.

Section 51.7 addresses the holding of a hearing on a request of the proposed incorporators. The adopted amendment provides the Commissioner with discretion in this matter.

Section 51.8 addresses the purpose of a hearing on a savings and loan charter application and any post-hearing investigation. The adopted amendments make references to the Commissioner gender neutral.

Section 51.9 addresses the deadline for a

decision on a savings and loan charter application. The adopted amendments make references to the Commissioner gender neutral.

Section 51.13 addresses savings and loan management qualifications. The adopted amendments improve grammar, flow, and gender neutrality.

Section 51.14 requires the Commissioner to provide notice of completion status to savings and loan charter applicants within 30 days of receipt of an application. The adopted amendment removes unnecessary words relating to another section of this title.

In Chapter 53, the adopted amendments include corrections of wording, capitalization, and punctuation; efforts to enhance consistency between various application and hearing processes; gender neutralization of a reference to the Commissioner, the removal of a restriction on extensions of approved offices, and the addition and revision of language to provide enhanced clarity.

Section 53.1 addresses the establishment of additional offices of a savings and loan association. The adopted amendment corrects and provides word choice and provide a one-year deadline for the applicant to open an approved office.

Section 53.2 addresses the types of additional offices permitted for a savings and loan association. The adopted amendments correct word choice and capitalization.

Section 53.3 addresses branch applications for savings and loan associations. The adopted amendments provide clarification and correct word choice, and make the hearing process for such an application consistent with that prescribed for other types of applications.

Section 53.4 addresses the findings

required for the Commissioner to approve a branch application for a savings and loan association. The adopted amendments make references to the commissioner gender neutral, provide clarifying words and phrases, correct capitalization and punctuation, and remove a restriction on extensions available for commencement of operations.

Section 53.8 addresses mobile facilities of savings and loan associations. The adopted amendments correct capitalization and punctuation.

Section 53.9 addresses the exemption from application requirements for a supervisory sale of savings and loan association offices or assets. The adopted amendments provide clarifying language and remove unnecessary words in reference to other sections of this title.

Section 53.10 addresses the conditions necessary for a sale of an office or assets to qualify as a supervisory sale from a savings and loan association. The adopted amendments revise existing language to provide enhanced clarity.

Section 53.18 addresses savings and loan association offices in other states or territories. The adopted amendments make the application and hearing processes for such offices consistent with those for domestic offices.

In Chapter 57, the adopted amendments include clarifying language, gender neutralization of references to the Commissioner, and efforts to enhance consistency between various application and hearing processes.

Section 57.1 addresses changes of office locations for savings and loan associations. The adopted amendments provide clarifying revisions, make references to the

Commissioner gender neutral, and provide a specific reference to applicable requirements in this title.

Section 57.2 addresses the hearing process applicable to office relocation for a savings and loan association. The adopted amendment makes the hearing process consistent with that applicable to other types of applications.

Section 57.3 addresses the changing of the name of a savings and loan association. The adopted amendments make references to the Commissioner gender neutral.

Section 57.4 addresses application forms relevant to this chapter. The adopted amendments improve and correct word choices.

Chapter 59 had only one section or rule in it §59.1 concerning Foreign Building and Loan Associations. As the repeal of §59.1 is adopted, the entirety of Chapter 59 will cease to exist. Section 59.1 was made unnecessary by federal law which facilitates interstate transactions.

In Chapter 61, the adopted amendments include the removal of unnecessary words and correction of the names of agencies and the title of the Texas Government Code.

Section 61.1 addresses the use of a hearings officer for savings and loan association matters. The adopted revision reduces and corrects references to the Texas Government Code and Finance Commission agencies.

Section 61.3 addresses the publication of a hearing notice relating to applications of savings and loan associations. The adopted amendments remove unnecessary words in reference to other sections of this title.

In Chapter 63, the adopted amendments

include improvements in word choice, reductions in fees, removal of unnecessary words, updates to covered corporate documents, clarification, gender neutralization of a reference to the Commissioner, and replacement of public information request fees with those prescribed by the Texas Attorney General.

Section 63.1 addresses the application fee for a savings and loan charter. The adopted amendment improves word choice.

Section 63.2 addresses the application fee for a savings and loan branch office. The adopted amendments reduce the fee and improve word choice.

Section 63.3 addresses the application fee for a savings and loan mobile facility. The adopted amendments remove unnecessary words in reference to another Chapter, and improve word choice.

Section 63.4 addresses the application fee for a savings and loan association name change. The adopted amendment improves word choice.

Section 63.5 addresses the fee for special examinations of savings and loan associations. The adopted amendment removes unnecessary words and improves word choice.

Section 63.6 addresses the application fee for amendments to corporate documents of savings and loan associations. The adopted amendment adds "certificate of formation" as such a document.

Section 63.7 addresses the application fee for a savings and loan association to issue a capital obligation. The adopted amendments reduce the fee, remove unnecessary words in reference to another section of this title, and provide clarifying language.

Section 63.8 addresses the annual assessments of savings and loan associations. The adopted amendments improve word choice and remove unnecessary words.

Section 63.9 addresses the fees for a savings and loan association to reorganize, merge, or consolidate. The adopted amendments remove unnecessary words in reference to other sections of this title.

Section 63.10 addresses the fee for remote applications such as automated teller machines ("ATMs"). Because such a fee is not charged to state savings banks it is deemed unnecessary for savings and loan associations and therefore the repeal of section 63.10 is adopted.

Section 63.11 addresses the application fee for a change of control of a savings and loan association. The adopted amendments remove unnecessary words in reference to another chapter within this title.

Section 63.12 addresses the application fees for subsidiaries of savings and loan associations. The adopted amendments reduce the initial fee.

Section 63.14 addresses the fee for conversion into another institution. Because such a fee is not charged to state savings banks it is deemed unnecessary for savings and loan associations and therefore the repeal of section 63.14 is adopted.

Section 63.15 addresses the fees charged for public information requests. The adopted amendments remove unnecessary words in reference to the Texas Government Code and clarify that reference, replace listed fees with reference to those established and maintained by the Texas Attorney General, make a reference to the Commissioner gender neutral, and provide clarifying language relating to the confidentiality of certain documents.

In Chapter 64, the adopted amendments include enhanced clarity of language, expansion of permissible record keeping processes, enhancement of financial audit requirements, enhancement to the consistency of accounting guidance, clarity of examination authority, and updated complaint processes.

Section 64.1 addresses the proper location of books and records of a savings and loan association. The adopted amendments improve word choice and punctuation, and expand on the permissibility of offsite electronic backups.

Section 64.3 permits the use of copies of savings and loan association records to substitute for destroyed physical documents. The adopted amendments improve phrasing and correct word choice, and expand the acceptable format of such copies to include electronic records.

Section 64.4 addresses annual financial reporting to the department. The adopted amendments remove distinctions of size and the requirement to submit an annual statement of condition, and instead require the submission of an annual independent audit consistent with predominant accounting and regulatory standards.

Section 64.6 addresses chargeoffs of and reserves against bad debts of savings and loan associations. The adopted amendment removes specific guidance and replaces it with a requirement to conform to Generally Accepted Accounting Principles (GAAP).

Section 64.7 addresses capital requirements for savings and loan associations. The adopted amendments clarify the interchangeable meaning of the terms “capital” and “net worth,” and remove an unnecessary definition for “total liabilities,” which is defined in existing and applicable

accounting guidance.

Section 64.9 addresses examinations of savings and loan associations. The adopted amendments clarify that the Commissioner may designate personnel to examine an association, and add clarifying words.

Section 64.10 addresses the procedures a savings and loan association must follow to inform consumers of the appropriate means by which they may file a complaint against the association. The adopted amendments clarify the procedures and update the contact information for the Department. The proposed amendment to Section 64.10(b)(1) would have corrected the name of the Department and would have modified the internet contact information. An intra-agency comment was received leading to further discussion on the proposed amendment to this rule. As a result the Department subsequently modified the Section 64.10(b)(1) and the commission adopts the language to modify the internet contact information for the department and to add physical, telephone and fax contact information and the corrected name of the Department.

In Chapter 65, the adopted amendments include the removal of unnecessary words, clarifications of terms and phrases, edits to promote gender neutrality, and updates to make rules consistent with prevailing guidance and regulations applicable to other depository charters.

Section 65.1 addresses permissible lending and investment products for savings and loan associations. The adopted amendments eliminate unnecessary words in reference to other sections of this title.

Section 65.2 provides an exemption from future rule changes for loans, investments, and letters of credit entered into in compliance with current savings and loan association

rules. The adopted amendment corrects one word.

Section 65.3 provides definitions for use in this Chapter. The adopted amendments update and clarify definitions and word choices, and make gender-specific references neutral.

Section 65.4 addresses a general limitation on loans made to One Borrower. The adopted amendment makes the limitation consistent with federal savings and loan associations by referring to the applicable federal statute.

Section 65.5 provides specific criteria applicable to residential real estate loans made by savings and loan associations. The adopted amendments update and clarify language without materially alter existing restrictions.

Section 65.6 provides specific criteria applicable to commercial real estate loans made by savings and loan associations. The adopted amendments update and clarify language without materially altering existing restrictions, and remove unnecessary words in reference to other sections of this title. An addition is proposed to permit home equity loans made in accordance with Chapter 153 without regard for additional restrictions imposed by this section.

Section 65.7 provides specific criteria applicable to unimproved real estate loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to other sections of this title.

Section 65.8 provides specific criteria applicable to personal property loans made by savings and loan associations. The adopted amendments clarify terms used and a reference to another title, remove a specific limitation of loans to One Borrower, and remove unnecessary words in reference to

another section of this title.

Section 65.9 provides specific criteria applicable to oil and gas loans made by savings and loan associations. The adopted amendments revise existing limitations based on more current information about the industry, clarify terms used, and remove unnecessary words in reference to another section of this title.

Section 65.10 provides specific criteria applicable to wrap-around real estate loans made by savings and loan associations. The adopted amendments revise language for clarity and remove unnecessary words in reference to another section of this title.

Section 65.11 addresses loans and transactions between savings and loan associations and officers, directors, affiliates, and employees. The adopted amendment replaces existing language with the requirements of federal regulations applicable to other depository charters through reference thereto.

Section 65.12 provides specific criteria applicable to unsecured loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.13 provides specific criteria applicable to manufactured home loans made by savings and loan associations. The adopted amendments clarify terms and phrases, and replace dated appraisal requirements with those in effect for federally-supervised institutions.

Section 65.14 provides specific criteria applicable to home improvement loans made by savings and loan associations. The adopted amendments clarify terms, phrases, and references, remove unnecessary words in

reference to another section of this title, and replace dated appraisal requirements with those in effect for federally-supervised institutions, repealing a then unnecessary paragraph.

Section 65.15 provides specific criteria applicable to acquisition, development, and construction loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.16 provides specific criteria applicable to interim construction loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.17 addresses loan policies and documentation. The adopted amendments clarify terms and references, remove dated federal agency names, and replace dated appraisal requirements with those in effect for federally-supervised institutions, repealing a then unnecessary paragraph.

Section 65.18 provides specific criteria applicable to letters of credit issued by savings and loan associations. The adopted amendments update references and clarify limitations on loans made to One Borrower.

Section 65.19 addresses investment made by savings and loan associations in real property. The adopted amendments clarify terms used.

Section 65.20 addresses investment made by savings and loan associations in deferred payment obligations. The adopted amendments clarify references to other titles.

Section 65.22 is an unnecessary restriction on the business of a savings and loan association as this issue is covered in section

65.11. Therefore the repeal of section 65.22 is adopted.

Section 65.23 addresses restrictions on loan transactions with third parties. The adopted amendment makes a reference to the Commissioner gender neutral.

In Chapter 67, the adopted amendments include revisions to improve clarity; corrections of grammar, punctuation, and titles; removal of an approval requirement for deposit forms; and removal of an unnecessary reference to a statute.

Section 67.3 addresses dividend computation for savings and loan associations. The adopted amendments improve clarity and grammar.

Section 67.4 is a dated and unnecessary restriction on the business of a savings and loan association in the contemporary marketplace, which reflects increased competition for deposits and more rapid changes in market interest rates. Repeal of section 67.4 will put savings and loan associations on a similar competitive level as other depository charters. The repeal of section 67.4 is therefore adopted.

Section 67.6 addresses distributions of savings and loan earnings on other than regular accounts. The adopted amendment improves clarity.

Section 67.7 allows a savings and loan association to contract for 90-day advance notice of savings account withdrawal. The adopted amendments provide clarifying language and update terms used.

Section 67.8 describes deposits permissible for savings and loan associations beyond savings accounts. The adopted amendments update terms used and remove an approval requirement for forms.

Section 67.10 permits savings and loan associations to jointly issue capital obligations. The adopted amendment provides clarifying language.

Section 67.11 requires minimum liquidity to be maintained by savings and loan associations operating without Federal Deposit Insurance Corporation insurance. The adopted amendment revises language for enhanced clarity.

Section 67.12 permits savings and loan associations to allow withdrawal from negotiable order of withdrawal accounts. The adopted amendments correct the title of the rule, and correct grammar.

Section 67.13 as adopted clarifies applicability to all savings and loan associations and removes an unnecessary condition.

Section 67.14 provides a dated and unnecessary application and approval process, which puts savings and loan associations at a competitive disadvantage against other institutions competing for deposit funding and relationships. Repeal of this section will place savings and loan associations on a similar competitive level as other depository charters. Examinations will evaluate deposit account administration and existing Department enforcement authority is sufficient to address any identified deficiencies. The repeal of section 67.14 is therefore adopted.

Section 67.15 permits the raising of capital for a savings and loan association through noninterest-bearing deposits. The adopted amendments remove unnecessary words and an unnecessary reference to a statute, and correct punctuation.

Section 67.17 addresses user safety at unmanned teller machines. The adopted

amendments revise existing language to provide clarity.

In Chapter 69, the adopted amendments include clarifications and gender neutralization.

Section 69.2 describes the necessary content of a savings and loan association merger application. The adopted amendments clarify that a majority vote of the board is required for each entity involved and provide additional clarifying language.

Section 69.3 requires the Commissioner to provide application forms for a savings and loan merger and allows for an investigation of the application. The adopted amendment revises language for clarity.

Section 69.4 requires a hearing for any savings and loan merger application. The adopted amendments clarify language and make a reference to the Commissioner gender neutral.

Section 69.5 requires a savings and loan association to publish notice of any merger application hearing. The adopted amendments clarify terms used and remove unnecessary words in reference to applicable statutes.

Section 69.6 sets a decision deadline for savings and loan association merger applications. The adopted amendments make a reference to the Commissioner gender neutral, clarify that the deadline is applicable only to applications covered in this chapter, and clarify language.

Section 69.7 addresses denial and appeal processes of savings and loan merger applications. The adopted amendments clarify phrasing.

Section 69.8 provides an exemption from application for supervisory mergers of savings

and loan associations. The adopted amendments remove unnecessary words and punctuation, primarily in reference to other sections of this title and applicable statutes.

Section 69.9 addresses the criteria the Commissioner may use to designate a savings and loan association merger to be a supervisory merger. The adopted amendments remove unnecessary words, clarify a reference to applicable statutes, and expand a list of federal regulators to account for changes made under federal legislation.

Section 69.10 addresses savings and loan association acquisitions of associations incorporated outside of Texas. The adopted amendments provide clarifying language and make references to the Commissioner gender neutral.

Section 69.11 addresses a savings and loan association's conversion into another charter. The adopted amendments make references to the Commissioner gender neutral, revise language for clarity, and revise references to applicable statutes.

In Chapter 71, the adopted amendments include correction of department naming and references, neutralization of gender references, updated criteria for presumption of control, clarification of information relating to lawsuits, and enhancement of the availability of a hearings process for change of control applications relating to savings and loan associations.

Section 71.1 is an introduction for this chapter, which addresses changes of control of savings and loan associations. The adopted amendment replaces an incorrect name for the Department with a reference to the Commissioner.

Section 71.2 provides definitions relevant to the change of control of a savings and loan

association. The adopted amendments neutralize gender references, clarify that the subject is control of an association in any form, and add a 10% rebuttable presumption of control similar to that in effect for state savings banks and all other federally-insured banks and thrifts.

Section 71.3 addresses the acquisition of a savings and loan association. The adopted amendments remove unnecessary words in reference to another section of this title, clarify information needing regarding lawsuits, and correct the name of the Department.

Section 71.4 addresses hearings for change of control applications of savings and loan associations. The adopted amendments provide an option for the Commissioner to require a hearing on a change of control application and extend the deadline for an applicant to file a petition to request a hearing on a denied application.

Section 71.5 addresses retention of control of a savings and loan association. The adopted amendments make reference to the Commissioner gender neutral.

Section 71.6 addresses the application for acquisition of a savings and loan association. The adopted amendment removes extra words in reference to the name of the Department.

Section 71.7 addresses abeyance of other application while a change of control application is in progress for a savings and loan association. The adopted amendment removes unnecessary words in reference to an association.

Section 71.8 addresses transactions which are exempt from the provisions of this chapter. The adopted amendments clarify the applicability of this section and remove unnecessary words in reference to the name of the Department.

In Chapter 73, the adopted amendments include gender neutralization of references to the Commissioner, removal of unnecessary words, correction of the Department name, and clarifying language.

Section 73.1 addresses subsidiaries of savings and loan associations. The adopted amendments make references to the Commissioner gender neutral and provide clarifying language.

Section 73.2 addresses applications for savings and loan association subsidiaries. The adopted amendments remove unnecessary words, update terms used to agree with other titles, and correct the name of the Department.

Section 73.3 addresses permissible activities for subsidiaries of savings and loan associations. The adopted amendments clarify that indirect ownership is covered and remove and unnecessary word.

Section 73.4 addresses savings and loan association subsidiary operations. The adopted amendments clarify language relating to required fidelity bond coverage and make a reference to the Commissioner gender neutral.

Section 73.6 addresses operating subsidiaries of savings and loan associations. The adopted amendment removes unnecessary words in reference to other sections of this title.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001-64.002 and 64.083, which provide that the Finance Commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas

Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

<Rules>

Chapter 51. Charter Applications

§51.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

(a) When the Certificate of Formation of a new association are presented to the savings and mortgage lending commissioner for approval, such Certificate of Formations shall be accompanied by an application which conforms to the statutory requirements provided in the Texas Savings and Loan Act, §62.001, and states the proposed location of the principal office of the new association and the identity and qualifications of the proposed managing officer. There shall also be submitted with the application a detailed description of each proposed loan instrument and such additional information as may be required by the proposed bylaws of the association together with such statements, exhibits, maps, plans, photographs, and other data, sufficiently detailed and comprehensive to enable the commissioner to pass upon matters set forth in the Texas Savings and Loan Act, §62.007. Such information must show that the proposed association will have and maintain independent quarters as considered appropriate by the commissioner with a ground floor location or its equivalent. The Certificate of Formation and all statements of fact tendered to the commissioner shall be verified as required by the Texas Savings and Loan Act, §62.001.

(b) No application to incorporate a new association shall be approved unless the application and evidence produced at hearing

satisfy the commissioner that the proposed association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation, if applicable, or the amount required of a national bank.

(c) No association with an approved charter shall open or do business as a savings and loan association until the commissioner certifies receipt of proof satisfactory to him or her that the above-required dollar amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as applicable, have been received by the association in cash, free of encumbrance.

(d) No application to incorporate as an association for an acquisition or merger under the Texas Savings and Loan Act, §62.051, shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association will be capitalized in an amount sufficient to accomplish the purposes for which incorporation is requested, which shall be an amount sufficient to insure that, after the proposed acquisition or merger, the resulting association will meet and continue to meet applicable minimum net worth requirements.

§51.2. Use of Approved Forms.

The commissioner shall furnish approved forms of application, and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, the commissioner shall make or cause to be made an investigation or onsite review of the application. The application form is available from the Department of Savings and Mortgage

Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

§51.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.

Within 10 days after the filing of a proper application, the commissioner shall set a date for a hearing on the application, which date shall not be more than 90 days after the date the application is deemed substantially complete. If an application for charter is filed at least 10 days before the date set for hearing of a pending charter application, for a location which, in the opinion of the commissioner, is for the same community as the pending application, such applications may be heard in one hearing to be held upon the date set for the pending application. In such cases, the proposed incorporators named in any such subsequent application shall cause the first two paragraphs of the notice required by §51.4 of this title to be published at least five days before the date of such hearing, and shall file proof of such publication at the hearing. In addition, the commissioner shall mail notice of such joint hearing to the parties set out in §51.5 of this title. If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner no less than 10 days prior to the date of hearing. Any amendment filed fewer than 10 days prior to the date of hearing shall be accepted only at the discretion of the hearing officer and the hearing officer may, upon motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if it appears that such amendment materially alters the application on file.

Provided, however, no additional publication of the date of such hearing shall be required.

§51.4. Publication of Notice of Charter Application.

The proposed incorporators shall publish at least 20 days before the date of the hearing, in a newspaper printed in the English language of general circulation in the county where the proposed association will have its principal office, a notice in a format acceptable to the commissioner.

§51.5. Notice to Associations.

The commissioner shall mail notice of such hearing to at least all state and federal savings and loan associations with offices in the county of the proposed location or in any adjoining or adjacent counties within a proximity that might be served or affected by the proposed association.

§51.6. Filing Proof of Publication.

At least 10 days before the hearing date the proposed incorporators shall file proof of publication in the manner provided in §51.4 of this title with the commissioner and if 10 days before the hearing date the commissioner has received no written statements of intention to appear in person or by attorney to protest the application from one or more parties, the hearing may be dispensed with by the commissioner. The commissioner shall notify the proposed incorporators at least five days before the date of the hearing in the event the hearing has been dispensed with.

§51.7. Hearing When Application Not Protested.

When requested by the proposed incorporators, a hearing may be held at the commissioner's discretion on the application even though no person has indicated a desire

to be heard against it.

§51.8. Purpose of Hearing; Post-Hearing Investigation.

The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of or opposed to the application upon which the commissioner shall make a determination of whether the application should be granted or denied. The commissioner may, in his or her discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner desires to base his or her decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

§51.9. Time of Decision on Charter Applications.

The commissioner shall render a decision within 60 calendar days after the date the hearing is finally closed if the hearing was held in accordance with §51.3 of this title, or after the date on which the hearing is dispensed with, as the case may be. Provided, however, in cases of conflicting applications meeting the requirements of §62.008 of the Texas Savings and Loan Act, where one or more subsequent applications are filed before the first application is heard, the commissioner may delay his or her decision on all such competing applications until 60 days after the last such application has been heard.

§51.13. Qualifying Management.

In determining the question of "qualified full-time management" of a proposed or new association:

(1) a person shall be prima facie qualified if currently managing a savings and loan association in this state, or if at the date of filing an application shall have had, next preceding such date, at least three consecutive years of practical experience in the executive management of a savings and loan association in this state; and

(2) a person shall be prima facie disqualified if they have less than three years active experience in real estate mortgage lending or has filed for bankruptcy; has made a voluntary assignment for benefit of creditors; has been convicted of a felony; defaulted on a fidelity bond; or has had a license revoked under The Real Estate License Act, The Securities Act, or the Insurance Code of this state.

§51.14. Notice to Applicants.

Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 63 of this title, the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.

Chapter 53. Additional Offices

§53.1. Establishment and Operation of Additional Offices.

Except for those additional offices set forth in the alternative procedures established in §53.5 of this title, no association shall establish or

maintain an office other than its home office without the prior written approval of the commissioner. An association's home office means the place where an association has its headquarters and from where all of its operations are directed. An authorized or approved office of an association means the place where the business of the association is conducted, and with the prior written consent of the commissioner may include facilities ancillary thereto for the extension of the association's services to the public. Any authorized or approved office of an association shall also mean, with the prior written consent of the commissioner, separate quarters or facilities to be used by the association for the purpose of performing service functions in the efficient conduct of its business. All offices of an association which are located outside the county of the domicile of its home office shall display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such association. An additional office approved by the commissioner under this chapter shall commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing by the commissioner. However, no more than one 12-month extension may be approved by the commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the authority for such office shall be forfeited.

§53.2. Types of Additional Offices.

Subject to the provisions of §§53.1 - 53.5 of this title, the following types of additional offices may be established and maintained by a savings association:

(1) branch offices at which the association may transact any business that could be done in the home office;

(2) loan production offices (loan offices) at which the association, may transact business, as provided by §53.5(a) of this title, but at which no other business of the association is transacted;

(3) mobile facilities at which the association may transact any business of the association that could be done in the home office provided that a detailed record of the transactions at such facility shall be maintained;

(4) administrative offices at which the association may transact administrative functions of the association, as provided by §53.5(b) of this title, but at which no other business of the association is transacted – such offices may be located separate and apart from the location of any other facility of the association, but all original records of the association shall be present and maintained at all times at the home office of the association;

(5) courier/messenger service to transport items relevant to the association's transactions with its customers, including courier services between financial institutions; and

(6) deposit production offices at which the association may transact business, as provided by §53.5(c) of this title, but at which no other business of the association is transacted.

§53.3. Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.

(a) Each application for permission to establish a branch office shall state the proposed location thereof; the location of other offices of the applicant and other associations within the community; the need for such a location; the personnel and office facilities to be provided; the estimated annual volume of business, income, and expense of

such office; and shall be accompanied by a proposed annual budget of the applying association. An association may file additional applications for branch offices. Each application shall be processed in the same manner as required for any other branch application. The provisions applicable to new charter applications apply to branch office applications, including the provisions related to hearings, notice, and decisions rendered on the application.

(b) Upon request, the commissioner shall furnish sample forms for the application and other information to aid in the filing of the application, to the extent permitted by law. After the application and its supporting data have been received by the commissioner, the commissioner shall make or cause to be made an investigation of the application.

§53.4. Findings Necessary for Approval of Branch Office.

The commissioner may not approve an application for a branch office unless the commissioner finds, based on the information furnished with the application, evidence adduced at the hearing, and department records that:

(1) the applying association has had no supervisory problems that would affect its ability to properly operate the branch office;

(2) the proposed operation will not unduly harm any other association operating in the same community as the proposed branch;

(3) a separate enclosed office area will be provided (utilization of counters or railings of less than ceiling height is acceptable);

(4) the proposed branch office will have qualified full-time management;

(5) there is a public need for the proposed

branch office and the volume of business in the community in which the proposed branch office will conduct its business is such that profitable operation is feasible within a reasonable period of time;

(6) the facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the commissioner; and

(7) the character, responsibility, and general fitness of the current directors and officers of the applicant are such that they command confidence and warrant belief that the branch office will be honestly and efficiently conducted in accordance with the intent and purpose of the Texas Savings and Loan Act.

§53.8. Mobile Facility Application; Operation of Mobile Facility; Notice; Publication; Hearing.

In order to obtain permission to establish a mobile facility, the following procedures and conditions shall apply:

(1) prior to the establishment and operation of such facility, the association shall obtain approval of the commissioner for permission to do so;

(2) such facility shall be operated only at locations approved by the commissioner, each of which shall at all times be appropriately identified at the site and on the facility, within 100 miles of the association's home office;

(3) the mobile facility shall be established and operated at two or more locations, each of which at the time of filing of the application shall be more than 10 miles from the locations of any home or branch office of any other savings and loan association;

(4) any such facility shall be open for

business at the same location on the same day or days of each week (established holidays excepted) but shall not be consecutive days, during such hours aggregating a total of not less than four hours a day as the association's board of directors may from time to time determine;

(5) the mobile equipment used in the establishment and operation of such facility shall not remain at the site except for business hours approved by the association. Further, each applicant shall show that adequate safeguards for the security protection of such mobile facility and its content will exist. The commissioner may require further safeguards if in his opinion the proposed safeguards be inadequate;

(6) operation of such facility shall not be conducted at any location after the expiration of such period of time as the commissioner shall prescribe which shall not exceed three years except with subsequent approval of the commissioner;

(7) an application for a mobile facility shall be filed with the commissioner in the same manner as required for a branch office with such supporting data that is pertinent to the application. Such application and supporting data shall be sworn to as prescribed in the Texas Savings and Loan Act, §62.001;

(8) each application for a mobile facility shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications; and

(9) an application for permission to establish a mobile facility may not be approved unless the commissioner shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, and his official records, all of the findings necessary for approval of a branch

office.

§53.9. Exemption for Supervisory Sale.

Whenever the commissioner designates the purchase of additional offices and/or assets by an association from another association to be a supervisory purchase, the sections relating to the contents of applications for additional offices and the findings necessary for approval, as provided by §§53.3-53.8 of this title, are not applicable to such purchases, and such purchase shall be effected pursuant to §53.10 of this title.

§53.10. Designation of Supervisory Sale.

The commissioner may designate a purchase of additional offices and/or assets by an association from another association to be a supervisory purchase when:

(1) the commissioner has placed the selling association under voluntary supervisory control or under conservatorship pursuant to Chapter 66 of the Finance Code;

(2) the commissioner has determined that the selling association is in an unsafe condition; or

(3) the primary federal regulator of the institution has determined, and notified the commissioner, that one or more of the grounds specified in the Home Owner's Loan Act of 1933, for appointment of a conservator or receiver, exist with respect to the selling association, or the proposed transaction is necessary to prevent the failure or possible failure of the selling association. For purposes of this section, the term "unsafe condition" shall mean that the selling association is insolvent; is in imminent danger of insolvency; that the association has experienced a substantial dissipation of its assets or earnings due to any violation or violations of applicable law, rules, or

regulations, or due to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its net worth; that the association and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the commissioner or any agreement between the association and the commissioner; that the association, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the association by the commissioner or other duly authorized personnel of the Department of Savings and Mortgage Lending; or that the association is affected by any other conditions which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

§53.17. Temporary Closing of Additional Offices.

In the event an association closes any additional office of any type on a temporary basis, said office must be reopened within 12 months. In the event such office is not reopened within that timeframe, authorization for that office is forfeited. Written notice of any temporary closing shall be furnished to the commissioner within 10 days of closing, and no additional office shall be deemed to have reopened until the commissioner receives written notification of reopening.

§53.18. Offices in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, an association may establish branch offices and loan offices in any state or territory of the United States. Each application for permission to establish such a branch office, or loan office, shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from

the appropriate state or territorial regulatory authority approving the office, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. An application under this section is subject to the same provisions and requirements as applications for domestic branch and loan offices, including provisions regarding timeframes, hearings, public notice and adjudication of the application. The commissioner may not approve an application unless the commissioner finds, based on the information furnished with the application, evidence adduced at the hearing, if applicable, and department records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

Chapter 57. Change of Office Location or Name

§57.1. Change of Office Location Not Requiring Approval; Application for Change of Location; Findings for Approval.

(a) An association may not move any office beyond its immediate vicinity without prior approval of the commissioner. Immediate vicinity means the area included within a radius or distance of one mile from the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the commissioner, if the office to be relocated has not been open for business at its present location for more than two years. If the existing office has been opened for more than two years, prior written notice shall be provided to the commissioner asserting the relocation is in the immediate vicinity.

(b) Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established

branch office by providing the commissioner with prior written notice. Upon such notification, the establishment of such office shall be deemed an approved branch or administrative office of the savings association.

(c) Each application, or prior written notice provided to the commissioner under this section, shall provide the existing and new branch location's address; a description of the land and building to be built or leased and the terms thereof; estimates of the cost of removal to and maintenance of the new location; information regarding any affiliated parties involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office, if applicable; evidence of the board's approval of the relocation; and any other information as deemed necessary by the commissioner.

(d) An application to move an office location shall be set for hearing by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.

(e) The commissioner may not approve an application to move or relocate any office of a savings association, unless the commissioner finds, based on the information furnished with the application, evidence adduced at a hearing, and information contained in department records and that all requirements of 7 Tex. Admin. Code §§53.4(1) - (7) have been met.

(f) This section does not apply to loan offices or administrative offices subject to §53.5 of this title.

§57.2. Notice, Publication, Hearing.

An application under this section is subject to the provisions and requirements applicable to new charter applications regarding hearings

and public notice.

§57.3. Change of Name.

An association may not change its name without the prior approval of the commissioner, and an association may not operate under any name which has not been approved by the commissioner pursuant to this section. The commissioner may not approve an application by an association to change its name unless the commissioner finds, based on information furnished with the application, evidence adduced at a hearing, and information contained in department records that the proposed change of name meets the applicable requirements of the Texas Savings and Loan Act and this chapter, and does not violate other applicable law.

§57.4. Application Forms.

Upon request, the commissioner shall furnish sample forms for the application for office relocation or application for change of name. Copies of the applications may be obtained from the Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

Chapter 59. Foreign Building and Loan Association

§59.1 Foreign Building and Loan Associations

Chapter 61. Hearings

§61.1. Hearings Officer.

Chapter 11 of the Texas Finance Code, provides that the Finance Commission may employ a hearings officer, who for purposes of Texas Government Code, §2003.021, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer

Credit Commissioner. The Finance Commission hearing officer shall conduct hearings under the provisions of the Act.

§61.3. Publication of Hearing Notice.

The provisions of §51.4 of this title and §69.5 of this title of these rules provide specific requirements regarding the form, content and time for publication of notice of hearing. Notwithstanding these provisions, content of the publication notice may be modified with approval of the commissioner to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

Chapter 63. Fees and Charges

§63.1. Fee for Charter Application.

Applicants for new charters for savings and loan associations shall pay a fee of \$10,000. This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of the application. In addition, the applicant shall pay the cost of a formal record and any cost incurred by the department in connection with investigation and travel expenses.

§63.2. Fee for Branch Office.

Applicants for branch offices under §53.3 of this title shall pay a fee of \$1,500. This fee shall be paid at the time of filing and shall include the cost of filing and processing of the application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

§63.3. Fee for Mobile Facility.

Applicants for a mobile facility under Chapter

53 shall pay a fee of \$500 plus \$100 for each location. This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of the application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with investigation and travel expenses.

§63.4. Fee for Change of Name or of Location.

Applicants for change of name or change of location of any branch office, approved or existing, shall pay a fee of \$500. This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of the application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with investigation and travel expenses.

§63.5. Fee for Special Examination or Audit.

Each association subject to a special examination shall pay to the commissioner an examination fee based upon a daily rate of \$325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination shall include only those examinations which the commissioner conducts or causes to have conducted after the institution has completed one annual examination.

§63.6. Fee for Corporate Document Amendments.

The commissioner shall collect a filing fee of \$100 for each amendment to a charter, certificate of formation, or bylaws of an association.

§63.7. Fee for Permission to Issue Capital Obligations.

The commissioner shall collect a filing fee of \$1,000 for each application by an association for permission to issue capital notes, debentures, bonds, or other capital obligations pursuant to §63.9 of this title to cover the processing and investigation of such applications.

§63.8. Annual Fees to do Business.

All associations chartered under the laws of this state and all foreign associations organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department such annual fee or assessment and examination fees as are set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the association at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

§63.9. Fee for Reorganization, Merger, and Consolidation.

(a) Any association seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings and Loan Act, §62.351 or §62.051, and Chapter 69 of this title shall pay to the commissioner, at time of filing its plan, a fee of \$2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of \$2,000 shall be paid to the commissioner. No additional fee is required for an interim charter to facilitate a transaction under §§69.1-69.11 of this title.

(b) The fee set forth in subsection (a) of this section shall cover the cost of filing, processing, and hearing, if applicable, with respect to the plan. In addition, such

association shall pay the cost of a formal record, if applicable, any cost incurred by the department in connection with investigation and travel expenses, and the fees required pursuant to §63.6 of this title.

§63.10 Fee for Remote Service Unit Applications

§63.11 Fee for Change of Control

The commissioner shall collect a filing fee of \$10,000 for each change of control application filed pursuant to Chapter 71 of this title and \$2,500 for rebuttal of control of an association or rebuttal of concerted action.

§63.12. Fee for Subsidiaries.

The commissioner shall collect a fee of \$1,500 for each application by an association for permission to make an initial investment in a subsidiary corporation pursuant to Chapter 73 of this title to cover the processing and investigation of such applications, and an additional fee of \$100 for each office other than the home office of a subsidiary that is applied for. The commissioner shall collect a fee of \$500 for service corporation application to engage in a new activity; \$300 for redesignation of an operating subsidiary; and \$100 for each application by an association to change the name of a subsidiary or the location of a subsidiary office.

§63.14 Fee for conversion into Another Financial Institution

§63.15. Fees for Public Information Requests.

(a) The fees for copies of records of the department which are subject to public examination pursuant to Chapter 552 of the Texas Government Code shall in accordance with Tex. Gov't Code §552.262, be those adopted by the rules of the attorney general as

reflected in 1 Tex. Admin. Code Ch. 70.

(b) All requests will be treated equally. Charges may be waived at the commissioner's discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the department and will be at the discretion of the commissioner.

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law.

(e) All public information requests will be referred to the commissioner's designee before the department will release the information.

Chapter 64. Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examination, Consumer Complaints

§64.1. Location of Books and Records.

Unless otherwise authorized by the commissioner, an association shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at that branch or agency office provided that control records of all business transacted at any branch or agency office shall be kept at the home office. An association may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner that meets applicable regulatory requirements, including those provided by the Federal

Deposit Insurance Corporation and the Federal Financial Institution Examination Council.

§64.3. Reproduction and Destruction of Records.

Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic, electronic, or microfilming process which correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material, and after doing so may dispose of the original record. Any such copy or reproduction shall be deemed to be an original record. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

§64.4. Financial Statements; Annual Reports.

Within 90 days of its fiscal year end, each saving association shall, regardless of asset size, submit an independent audit of its financial statements and all correspondence reasonably related to the audit to the commissioner. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 CFR Part 363, with the exception of any matters specifically addressed by this section, the Act, or its related rules.

§64.6. Charging Off or Setting Up Reserves against Bad Debts.

The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted

Accounting Principles (GAAP).

§64.7. Capital Requirements.

(a) Definitions.

(1) Unless the context clearly indicates otherwise, when used in this chapter, “Capital” for an association shall include (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the association's capital under generally accepted accounting principles) plus any retained earnings and additional paid-in capital as well as such other items as the commissioner may approve in writing for inclusion as capital.

(2) “Net Worth” for the purpose of this chapter may be used interchangeably with the term “Capital.”

(b) Minimum Capital Requirement. Each association shall maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

§64.9. Examinations.

(a) The commissioner, or the commissioner’s designee shall examine every state savings and loan association once each year, or more frequently if the commissioner determines that the condition of the savings and loan association justifies more frequent attention to enforce the Act. The commissioner may defer an examination for not more than six months if the commissioner considers the deferment appropriate to the efficient enforcement of the Act and consistent with the safe and sound operation of the institution.

(b) An examination under the section may be performed jointly or in conjunction with an examination by the Federal Deposit Insurance

Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings and loan association, and/or the commissioner may accept an examination made by such agency in lieu of conducting an examination pursuant to this section.

§64.10. Consumer Complaint Procedures.

(a) Definitions

(1) "Privacy notice" means any notice which a savings and loan association provides to consumers regarding the association's privacy practices, regardless of whether it is required by a specific state or federal law to provide such notice or provided to consumers voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 936-2003, or via electronic submission on the Department's website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in

each privacy notice provided to consumers.

(3) A savings and loan association must provide consumers with the required notice in compliance with paragraph (1) of this section whether or not the savings and loan association is required by any state or federal law to provide privacy notices to its consumers.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a savings and loan association conducts business with consumers in person, the required notice, in the form specified in paragraph (1) of this section, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business at that location or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) At a minimum, the savings and loan association must provide the required notice when the customer relationship is established.

(C) If a savings and loan association maintains a web site, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

Chapter 65. Loans and Investments

§65.1 Types of Loans, Letters of Credit, and Investments Authorized

(a) An association may make, commit to make, purchase, or commit to purchase any loan or investment it could make, and may

issue any letter of credit it could issue, if it were incorporated and operating as a federal association domiciled in this state, so long as for each transaction the association complies with all applicable regulations governing such activities by federal associations. However, all such loans, letters of credit, or investments must be documented in accordance with the applicable requirements of this chapter.

(b) An association may make, commit to make, purchase, or commit to purchase the following types of loans or participations:

(1) residential real estate loans, in accordance with §65.5 of this title;

(2) commercial real estate loans, in accordance with §65.6 of this title;

(3) unimproved real estate loans, in accordance with §65.7 of this title;

(4) personal property loans, in accordance with §65.8 of this title;

(5) oil and gas loans, in accordance with §65.9 of this title;

(6) wrap-around real estate loans, in accordance with §65.10 of this title;

(7) loans to officers, directors, affiliated persons, or employees of the association, in accordance with §65.11 of this title;

(8) unsecured loans, in accordance with §65.12 of this title;

(9) manufactured home loans, in accordance with §65.13 of this title;

(10) home improvement loans, in accordance with §65.14 of this title;

(11) acquisition, development and construction loans, in accordance with §65.15 of this title; and

(12) interim construction loans, in accordance with §65.16 of this title;

(13) without regard to any loan limitations or restrictions otherwise imposed by this chapter other than §65.17 of this title, any loan, secured or unsecured, which is insured or guaranteed in any manner and in any amount by the United States or any instrumentality thereof;

(14) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(15) loans on the security of real estate loans which the association could make under this chapter.

(c) A loan secured by a first lien on a leasehold interest in real property and improvements situated thereon shall be considered a residential or commercial real estate loan, as applicable under this chapter, provided, if the term of the loan is five years or less, then the unexpired term of the leasehold estate must extend or be automatically renewable for a period equal to twice the term of the loan, and if the term of the loan is more than five years, the unexpired term of the leasehold estate must extend or be automatically renewable for a period of at least five years beyond the duration of the loan.

(d) Except in the case of wrap-around real estate loans and home improvement loans, an association may not make a loan which is secured by a lien inferior to a second lien upon the security property unless every prior lien thereon is owned by the association.

(e) An association may sell with or without recourse, any loan or participation therein which the association may make under this chapter.

(f) An association may service any loans sold by the association and may service loans originated by other lenders.

(g) An association may issue and honor letters of credit in accordance with §65.18 of this title.

(h) An association may purchase the following types of investments:

(1) No Change.

(2) interests in real property, in accordance with §65.19 of this title;

(3) interests in deferred payment obligations, in accordance with §65.20 of this title; and

(4) interests in securities, in accordance with §65.21 of this title.

(i) All provisions and limitations of this chapter shall apply to subsidiaries of an association.

§65.2 Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein

(a) Any loan, investment, or letter of credit, or legally binding commitment thereof, made by an association in compliance with the rules then in effect shall not be affected by any subsequent rule or rule amendment during the original term thereof, nor shall any rule or rule amendment enacted subsequent to the date of any loan made in compliance with the rules then in effect apply to any renewal, extension, or rearrangement of such loan, if:

(1) the total obligations of the borrower do not increase other than as provided in the instruments evidencing such loans, so long as the renewed, extended, or rearranged loan

amount does not exceed 100% of the appraised value of the security property at the time the previous loan was made and so long as the renewal, extension, or rearrangement is executed on or before December 31, 1992; or

(2) the renewal, extension, or rearrangement:

(A) is with respect to a loan which matures on or before December 31, 1986;

(B) is executed on or before December 31, 1986;

(C) does not cause the loan amount to exceed 100% of the appraised value of the security property at the time the previous loan was made; and

(D) does not provide for a maturity date for such renewed, extended, or rearranged loan beyond December 31, 1987.

(b) Any renewal, extension, or rearrangement of a loan, investment, or letter of credit that does not meet these exceptions shall be in compliance with the provisions of this chapter.

(c) An association may purchase a loan, or a participation therein, even though the loan does not meet the requirements of this chapter, if the loan was made in compliance with regulations applicable at the time the loan was made. If the loan has been renewed, extended, or rearranged after December 27, 1985, such renewal, extension, or rearrangement must have been in compliance with this section.

§65.3 Definitions

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

(1) Acquisition, development, and

construction loans (ADC loans)--Loans that finance the acquisition of unimproved land and its development by the installation of utilities, streets, and other similar infrastructure necessary for commercial or residential development; or loans to finance not only the acquisition and development of land but also the building of residential or commercial structures thereon. This term does not include any funds advanced in a transaction which is properly classifiable as an investment under generally accepted accounting principles.

(2) Affiliated person--A director, officer, or controlling person of an association; a spouse of a director, officer, or controlling person of an association; a member of the immediate family of a director, officer, or controlling person of such association; any corporation or organization (other than the association or a subsidiary of the association) of which a director, officer, or controlling person of such association is chief executive officer, chief financial officer, or a person performing similar functions, is a general partner, is a limited partner who, directly or indirectly either alone or with their spouse and the members of their immediate family, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members, owns an interest of 25% or more in the partnership; or directly or indirectly either alone or with their spouse and the members of their immediate family, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such association, and their spouses and their immediate family members, 25% or more of any class of equity securities; any trust or other estate in which a director, officer, or controlling person of such association or a member of their immediate

family has such association or a member of their immediate family has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity; a holding company affiliate; and any officer, director, or controlling person of a holding company affiliate.

(3) Break-even income--Any excess of gross income generated by the security property over operating expenses incurred (including, but not limited to, debt service but excluding depreciation), determined on an accrual basis, in accordance with generally accepted accounting principles, for any six consecutive months after execution of the loan. Debt service shall be calculated on the basis of the interest rate contracted for in the loan, whether paid or accrued, whichever is higher.

(4) Commercial real estate--Land improved by structures primarily used for commercial purposes.

(5) Controlling person--Any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing 25% or more of the voting shares or rights of an association; or controls in any manner the election or appointment of a majority of the directors of an association. A director of an insured institution will not be deemed to be a controlling person of such institution based upon their voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors, an association, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of

the entire board and if its authority is revocable by such a majority.

(6) Holding company affiliate--A corporation of which an association is a subsidiary and any other subsidiary of such corporation other than a subsidiary of the association.

(7) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas, around townhouses or condominium units, which are incidental to ownership of the residence.

(8) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(9) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(10) Interim construction loans--Loans made to finance the construction or improvement of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans allowed under §65.14 of this title.

(11) Loans--For purposes of limitations on loans to One Borrower, the total amounts of funds advanced under a loan agreement or commitment plus any interest due and unpaid, less repayments. The term also includes credit extended in the form of finance leases; potential liabilities under standby letters of credit, lines of credit, and guarantee or suretyship obligations, except to the extent the institution has recourse to cash or a segregated deposit account of its customer to indemnify it

against such liabilities; undisbursed loan proceeds, unless the loan is subject to an overline purchase commitment of another financial institution; investments in commercial paper and corporate debt obligations; funds which the association is unconditionally committed to advance in the future under any type of commitment; and the amount of funds advanced on a wrap-around loan, plus the unpaid balances of any prior liens the association is allowed to pay under the loan agreement. The term does not include a loan or participation interest the association has sold without recourse, a loan secured by a first lien on real estate subject to an annual contributions contract under former §23 of the United States Housing Act of 1937, a loan on the security of the institution's deposit accounts, or a deposit or a loan of unsecured day(s) funds (i.e., federal funds or similar unsecured loans) with a commercial bank or a savings association.

(12) Manufactured home--A structure, transportable in one or more sections which, when configured for travel, measures eight body feet or more in width or forty body feet or more in length, or when erected on site, measures three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning, and electrical systems of such structure.

(13) Manufactured home chattel paper--A document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.

(14) Officer--The president, any vice president (but not an assistant vice president, second vice president, or other vice president having authority similar to an assistant or

second vice president) the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization, whether incorporated or unincorporated. The term "officer" shall also mean the chairman of the board of directors if the association's certificate of formation or bylaws authorize the chairman to participate in the operating management of the association or the chairman actually participates in such management.

(15) One Borrower--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10% or more (based on the value of their contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor shall not be deemed an obligor.

(16) Personal property--Tangible and intangible property which is not real property, including the following items as defined in the Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper,

documents, general intangibles, cash proceeds, and non-cash proceeds.

(17) Recourse--For the purposes of §§65.6, 65.7, 65.15, and 65.16 of this title, a contract by a borrower or guarantor to repay at least 25% of the principal balance outstanding from time to time, together with 100% of all interest accrued on the loan and all expenses and costs incurred in connection with the loan. For all other sections, a contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(18) Residential real estate--Land improved by a house, a home, or an apartment house.

(19) Subsidiary--A subsidiary of an association shall have the meaning prescribed in §73.1 of this title.

(20) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate shall be considered residential real estate or commercial real estate.

(21) Wrap-around real estate loan--A financing arrangement whereby a junior mortgage lien secures a liability consisting of the amount of senior debt, plus any additional funds advanced to the borrower.

§65.4 Limitations on Aggregate Loans to One Borrower

No association shall make a loan or loans pursuant to this chapter to any One Borrower which is greater than a savings association is permitted under Section 5(u) of the Home Owners' Loan Act (12 U.S.C. 1464(u)). More restrictive limitations on loans to One Borrower may apply to specific types of loans under other sections of this chapter.

§65.5 Residential Real Estate Loans

(a) An association may make real estate purchase money loans, make other loans secured by a first lien on residential real estate, or participate in loans secured by a first lien on residential real estate, provided that the amount of any such loan (including purchase money loans) or participation does not exceed 90% of the appraised value of the underlying collateral, or 95% of appraised value if the underlying collateral is the borrowers principal residence.

(b) An association may make loans or purchase participations in loans secured by a second lien on residential real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the association holds the prior lien, the second lien shall not be inferior to any open-ended future advances under the first lien agreement to which the security interest in the collateral is subject, other than disbursements authorized under the Texas Savings and Loan Act, §64.061.

(c) Except as provided in subsection (d) or (e) of this section, all residential real estate loans shall be repayable in monthly installments in an amount sufficient to fully amortize payment of principal and interest within a period not to exceed 40 years from the date the loan is made, unless other terms or repayment periods are allowed as specified in subsection (e) of this section.

(d) Residential real estate loans may provide for variable interest rates, under the following conditions:

(1) the term of the loan does not exceed 40 years;

(2) the factor or index governing the extent of the variation is not under the control of the association and can be readily

ascertained from sources available to the public or any other index approved in writing by the commissioner which is available to the public; and

(3) the unpaid principal balance of the loan, where all or a portion of the interest component of the periodic payments has been added to principal during the loan term, shall not exceed 125% of the original appraised value of the collateral, except where the commissioner has given specific prior written approval of a particular loan plan under which a larger amount of negative amortization occurs or may occur.

(e) Monthly repayment of principal and interest is not required under the following circumstances:

(1) when the loan is repayable in quarterly, semi-annual, or annual installments, provided such installments are in an amount sufficient to retire the debt, both interest and principal, within 20 years; or

(2) when loan payments do not amortize principal, provided interest is payable at least semi-annually and the term of the loan does not exceed five years; or

(3) when the loan is on a home and provides for graduated monthly payments during a period not to exceed the first 10 years of the loan, provided the 40 year repayment provision of subsection (c) of this section is met, and provided:

(A) monthly payments during the first five years of the loan are in an amount sufficient to pay all interest due on the loan and all pro-rated taxes, insurance and governmental charges assessable for the payment period; and any payments in excess of such amounts shall be credited to prepaid interest, principal, or escrow for taxes and insurance, at the borrower's option; and

(B) monthly payments for years six through nine of the loan term are in an amount sufficient to pay all items stated in subparagraph (A) of this paragraph for the payment period, together with a principal payment sufficient to amortize the entire principal balance of the loan within a period not to exceed 50 years; and

(C) monthly payments after 10 years from original date of the loan are in an amount sufficient to pay all items stated in subparagraph (A) of this paragraph, together with a principal payment sufficient to amortize the entire principal balance of the loan within a period not to exceed the next 30 years.

(f) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title.

(g) Notwithstanding any provision of this chapter to the contrary, an association may make purchase money loans to facilitate the sale of real property acquired by the association through foreclosure in the amount of 100% of the purchase price, plus the cost of any improvements included in the subject loan, if made in compliance with all applicable lending rules and regulations, and the transaction is documented in accordance with the applicable requirements of this chapter.

§65.6 Commercial Real Estate Loans

(a) An association may make purchase money loans on commercial property, or may make other loans or participate in loans secured by a first lien on commercial real estate, in an amount not to exceed the lesser of 90% of the appraised value of the underlying collateral, or 90% of the purchase price on a purchase money loan.

(b) An association may make loans or purchase participations in loans secured by a

second lien on commercial real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the association holds the prior lien, the second lien shall not be inferior to any open-ended future advances under the first lien agreement to which the security interest in the collateral is subject, other than disbursements authorized under the Texas Savings and Loan Act, §64.061.

(c) All commercial real estate loans shall be repayable in the same manner provided for residential real estate loans in §65.5 of this title, except that, provided the repayment period does not exceed 30 years, the loan may provide for graduated monthly payments only during a period not to exceed the first five years of the loan, if the payments are in an amount sufficient to pay all interest due on the loan and all pro-rated taxes, insurance and governmental charges assessable for the payment period; and any payments in excess of such amounts are credited to prepaid interest, principal, or escrow for taxes and insurance, at the borrower's option.

(d) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and included in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the security property. Notwithstanding any recourse requirement, an association may elect to release the borrower or guarantor from liability, if the association determines that the underlying collateral has generated break-even income. Any amount of

the loan that represents interest shall not be disbursed until such interest is due.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a).

(f) An association may make home equity loans in accordance with 7 Tex. Admin. Code Chapter 153 without regard for additional restrictions that would otherwise be imposed by this section.

§65.7 Unimproved Real Estate Loans

(a) An association may make loans or purchase participations in loans secured by a first lien on unimproved real estate, in the amount of 90% of the appraised value of the underlying collateral, or if the loan is for the purchase of the property, the purchase price, if less than the appraised value, on the terms set out in this section.

(b) An association may make loans or purchase participations in loans secured by a second lien on unimproved real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the association holds the first lien, the second lien shall not be inferior to any open ended future advances under the first lien agreement to which the underlying collateral is subject, other than disbursements under the Texas Savings and Loan Act, §64.061.

(c) Any such loan must be repayable in the same manner provided for residential real estate loans in §65.5 of this title, except §65.5(e)(3).

(d) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to

this section, and provided a detailed, narrative underwriting report is prepared and included in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association, has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the underlying collateral. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title.

§65.8 Personal Property Loans

(a) An association may make loans or purchase participations in loans secured by perfected first lien security interests in personal property as provided in the Texas Business and Commerce Code, in the maximum amount of 95% of the appraised or market value of the underlying collateral, or if the loan is for the purchase of the property, the purchase price if less than 95% of the appraised or market value. The loan must be on the terms set out in this section.

(b) Any such loan in an amount less than \$15,000 must mature and become payable within 60 months from the date the loan is made, and interest must be payable at least semi-annually. Any such loan in an amount of \$15,000 to \$30,000 must mature and become payable within 120 months from the date the loan is made, and interest must be payable at least semi-annually and principal payable at least annually in an amount sufficient to fully amortize the loan. Any such loan in an amount over \$30,000 must mature and become payable within 180 months from the date the loan is made, and interest must be payable at least semi-annually and principal payable at

least annually in an amount sufficient to fully amortize the loan.

(c) A loan made under this section may include add-on interest as authorized by the Texas Credit Title of the Finance Code.

(d) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, only if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the underlying collateral. Any amount of the loan which represents interest shall not be disbursed until earned.

(e) The association shall monitor the security property to insure that the unpaid balance of the loan does not exceed value of the property during the term of the loan.

(f) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a)(1)-(8),(12), and (13) of this title. If other property (for example, residential or commercial real estate) is provided as additional security for the loan, the loan is not required to meet the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

§65.9 Oil and Gas Loans

(a) An association may make loans or purchase participations in loans secured by a first lien on proven reserves of oil and gas and other minerals in place and before they have

been extracted from the ground, in an amount not to exceed 75% of the value of the proven reserves which act as security, as reasonably estimated by competent reserve evaluation specialists; or on producing oil and gas properties and an assignment of the proceeds of the sale of the portion of the total production attributable to the interest securing the loan, but no such loan shall exceed three times the annualized net revenue accruing to the interest securing the loan at the time the loan is made.

(b) The aggregate amount of any such loans to One Borrower shall not exceed 10% of the association's net worth.

(c) Any such loan must mature and become payable within 60 months from the date the loan is made, and shall be repayable in installments of principal and interest, payable no less often than semiannually.

(d) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the total amount of the loan including any amounts to pay interest and fees, does not exceed 75% of the appraised value of the underlying collateral. Any amount of the loan which represents interest shall not be disbursed until earned.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title.

(f) No other provision of this chapter other than §65.1(a) of this title or §65.12 of this title shall be utilized to make loans or purchase

participations in loans secured by oil and gas and other minerals before they have been extracted from the ground.

§65.10 Wrap-around Real Estate Loans

An association may make loans or purchase participations in wrap-around real estate loans provided that:

(1) the loan is secured by a lien on real estate which is encumbered by prior liens;

(2) the loan is evidenced by a note or bond which:

(A) principal amount equals the aggregate of the outstanding prior indebtedness plus the additional funds advanced or to be advanced by the wrap-around lender;

(B) requires payments by the wrap-around borrower to the wrap-around lender of periodic installments at least sufficient to make required current payments on the prior indebtedness; and

(C) allows the wrap-around lender to make the payments due on the prior indebtedness;

(3) any such wrap-around loan must also meet the terms for and limitations on real estate loans, as applicable, set out in this chapter;

(4) prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title. Further, the loan file shall contain complete documentation of the date, amount, interest rate, terms, maturity and unpaid balance of all prior liens on the security property together with estoppel letters or certificates from prior lienholders which obligate such prior lienholders to give the wrap-around lender

notice of any default on the prior indebtedness and an opportunity to cure any such default. The unpaid balance of all such prior liens shall be included when aggregating loans to One Borrower subject to the limitations of this chapter.

§65.11 Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees shall be limited and governed by the provisions of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. Such provisions shall be enforced by the department.

§65.12 Unsecured Loans

(a) An association may make unsecured loans or participate in unsecured loans, provided that the aggregate amount of such unsecured loans to One Borrower shall not exceed \$50,000 or 10% of the association's net worth, whichever is greater.

(b) All such loans shall be repayable in substantially equal monthly installments of principal and interest within a period not to exceed five years from the date the loan is made, unless other terms and repayment periods are allowed in subsection (c) of this section.

(c) Such loans may provide for repayment of interest only, not less than quarterly, so long as the loan fully matures and becomes payable within 24 months from the date the loan is made, or such loans may provide for repayment of interest only, not less than semi-annually, so long as the loan fully matures and becomes payable within 12 months from the date the loan is made.

(d) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for loans on such security, so long as all requirements of this section are met.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17 of this title.

(f) No loan made pursuant to this section shall be renewed for more than two periods equal to the original term of the loan without a principal reduction in the minimum amount of 15% of the outstanding principal balance, or the prior written approval of the commissioner.

§65.13 Manufactured Home Loans

(a) An association may make or participate in loans secured by perfected first lien security interests in manufactured homes, in the maximum amount of 90% of the appraised or market value of the underlying collateral, or if the loan is for the purchase of the property, the purchase price, if less than 90% of the appraised or market value, on the terms set out in this section.

(b) The aggregate amount of any such loans to One Borrower shall not exceed \$75,000 or 10% of the association's net worth, whichever is greater. This limitation does not apply to manufactured home chattel paper purchased by an association if the association's board of directors designates an officer whose responsibility shall be to certify in writing that the financial condition of each maker of such chattel paper is adequate to service the debt on such paper, and who shall also certify in writing that the association is relying primarily on the responsibility of each maker for payment of such loans and not upon any full or partial recourse, endorsement or guaranty by the person who transfers the paper to the

association. Such certification must be part of the permanent loan file. In such a case, the limitation on loans to One Borrower shall apply to each such maker.

(c) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest.

(d) No loan made under this section shall include amounts to pay interest on the loan.

(e) Prior to funding a loan under this section, an association shall have in its permanent loan file for such loan the following documents and records:

(1) an application for the loan, signed by the borrower, which discloses the purpose for which the loan is sought, the identity of the underlying collateral, and the source of funds which will be used to repay the loan;

(2) a purchase money contract signed by the buyer and seller;

(3) financial information about the borrower consisting of the information in the applicant's file at the local credit reporting agency, together with an application for credit signed by the borrower. A current report shall contain information updated to within six months prior to the date of application for loan;

(4) a loan approval sheet, indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the plan, any conditions of approval and certifying that the persons approving the loan have confirmed that the limitation on loans to One Borrower is met;

(5) a loan disbursement statement, indicating the date, amount, and ultimate

recipient of every disbursement of the proceeds of such loan;

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note signed by the borrower, and the original of the signed instrument creating or constituting the lien securing the loan;

(8) the application for or original document of title issued pursuant to the Texas Manufactured Housing Standards Act, or any amendments thereto, showing the association as first lienholder;

(9) evidence that the manufactured home is insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state where the security is located and naming the association as a coinsured, as its interest may appear;

(10) in the case of a new mobile home, the maximum loan amount shall not exceed 135% of the manufacturer's invoice plus sales tax, insurance premiums, license and title fees, and dealer-installed options. In the case of used units, the maximum loan amount shall not exceed NADA value plus dealer installed new equipment or appraised value plus sales tax, license and title fees, and insurance premiums;

(11) if the loan is collateralized by real estate, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq.

§65.14 Home Improvement Loans

(a) An association may make or purchase participations in home improvement loans secured by a lien on a home, on the terms set out in this section. In no event shall the

amount of the loan, when added to the unpaid balance of all prior liens, exceed 95% of the appraised value of the underlying collateral.

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest, or may mature and be repayable as allowed in §65.5(e)(1) or (2) of this title.

(c) Prior to funding a loan under this section, an association shall have in its permanent loan file the following documents and records:

(1) an application for the loan, signed by the borrower, which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a proposal signed by the borrower and, if applicable, the contractor reflecting the home improvements to be accomplished;

(3) financial information about the borrower consisting of the information in the applicant's current file at the local credit reporting agency, together with written certification by the borrower that no material adverse changes in the financial information have occurred since the date of such information. A current report shall contain information updated to within six months prior to the date of application for loan;

(4) a loan approval sheet, indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval and certifying that the persons approving the loan have confirmed that limitation on loans to One Borrower is met;

(5) a loan settlement statement, indicating in detail the expenses, fees, and charges the

borrower or borrowers have paid in connection with such loan;

(6) the promissory note signed by the borrower;

(7) the original of the signed instrument or instruments creating or constituting the lien securing the loan;

(8) evidence that the association will have a valid lien on the security property according to the terms of the loan documents;

(9) evidence that the home and all insurable improvements are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the home is located and naming the association as coinsured, as its interest may appear; and

(10) for all loans covered under this section, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq.

(d) Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

(e) Upon completion of the improvements financed by the loan, a certificate of completion executed by the owner or contractor shall be made part of the permanent loan file.

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title of the Finance Code.

(g) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, only if the loan amount conforms to this section, and

provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the underlying collateral. Any amount of the loan which represents interest shall not be disbursed until earned.

§65.15 Acquisition, Development, and Construction Loans

(a) An association may make or purchase participations in acquisition, development, and construction loans when the loans are secured by a first lien on the real estate acquired and all structures and improvements to be constructed thereon under the loan agreement.

(b) All such loans shall be in an amount not to exceed 90% of the appraised value of the real property and the contemplated improvements and structures, when completed.

(c) All such loans shall be repayable in full within five years from the date the loan is made, and interest shall be payable at least semi-annually. Such loans may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the association and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is available to the public.

(d) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title.

(e) A loan made under this section may include amounts to pay interest on the loan,

and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the underlying collateral. Notwithstanding any recourse requirement, an association may elect to release the borrower or guarantor from liability, if the association determines that the underlying collateral has generated break-even income. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(f) Each such loan may be renewed beyond five years from the date the loan is made only with the express written permission of the commissioner.

§65.16 Interim Construction Loans

(a) An association may make or participate in interim construction loans to finance the construction or improvement of residential or commercial structures when the loans are secured by a first lien on the real estate and all structures and improvements to be constructed thereon under the loan agreement.

(b) All such loans shall be in amount not to exceed 90% of the appraised value of the real estate and the contemplated structures when completed.

(c) All such loans shall be repayable in full within 36 months from the date the loan is made, and interest shall be payable at least semi-annually. Such loans may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the association and can be readily ascertained from sources

available to the public or any other index approved in writing by the commissioner which is available to the public.

(d) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title.

(e) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the Texas appraised value of the underlying collateral. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(f) Each such loan may be renewed beyond 36 months from the date the loan is made only with the express written permission of the commissioner.

§65.17 Loan Policies and Documentation

(a) Each association shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's

character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the association and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed by the borrower or his agent, (and if the borrower is a corporation, a board of directors resolution authorizing the loan) which discloses the purpose for which the loan is sought, the identity of the underlying collateral, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or his agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing purchase of the security for the loan;

(3) current financial statements signed by

the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed that applicable limitations on loans to One Borrower are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon his completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, or oil and gas or mineral loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with 12 C.F.R §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the association arrived at the appraised or market value of the underlying collateral;

(13) any loan agreement or other ancillary documents relating to the loan;

(14) any documents required by the Texas Credit Title of the Finance Code.

(b) Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (a)(1) and (3)-(7) of this section.

(c) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(d) An association may designate as escrow

agent an attorney or a title company either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents shall be forwarded to the association within five business days after closing, or immediately after recording, for those documents which require filing of record.

(e) Permanent Loan File Requirements.

(1) Loan documentation shall be in the possession of the association or an escrow agent designated by the association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the association.

(2) The permanent loan file required by this section shall be located at an office of the association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file shall contain evidence that the association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the association's interest therein. This requirement shall not apply to loan participations purchased by the association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(5) When an association purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The association shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(f) The records of the association shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the association. Loans originating in branch offices, loan offices, or agencies shall be approved in the same manner as loans originating in the principal office. The board of directors shall approve or ratify all loans, except loans secured by savings accounts of the association and loans of less than \$ 10,000.

(g) An association shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§65.18 Letters of Credit

An association may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC

Publication Number 600, and in conformity with the following conditions:

(1) the association shall maintain a letter of credit register containing name of customer, address, amount of credit extended and identifying number;

(2) each letter of credit shall conspicuously state that it is a letter of credit or shall be conspicuously entitled as such;

(3) unless otherwise approved in writing by the commissioner, or fully secured by accounts in the association, the association's undertaking shall be for a definite term, not to exceed 12 months from the date of issuance, and shall not be automatically renewable and shall be limited in dollar amount;

(4) the association's obligation to pay shall arise only upon presentation of a draft and other documents as specified in the letter of credit and there shall be no obligation on the part of the association to determine questions of fact or law at issue between the account party and the beneficiary;

(5) the association shall obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit;

(6) the amount of each letter of credit shall be included in the aggregation of loans subject to the limitations of this chapter relating to loans to One Borrower;

(7) each letter of credit's terms shall be limited and its documentation shall be accomplished as though it were a loan under this chapter; and

(8) an appropriate fee may be collected for each letter of credit issued.

§65.19 Investments in Real Property

An association may, in the course of its business, purchase, sell, own, rent, lease, manage, subdivide, develop, improve, operate for income, or otherwise deal in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures). Investments of an association under this section shall not at any one time aggregate more than an amount equal to 100% of an association's net worth without the prior written approval of the commissioner. All investments in real property under the authority of this section shall be subject to the following conditions.

(1) All expenditures in connection with the purchase, construction, modernization, or improvement of such real property shall be capitalized and carried on the books of the association at its cost in such real estate.

(2) Net profit realized from the exercise of the authority granted herein shall be determined by the use of generally accepted accounting principles.

(3) Loans.

(A) An association may lend an amount not to exceed otherwise applicable lending limitations under the rules and regulations for loans on real estate, to finance the sale by it of real property, or portions thereof, acquired under the authority of this section, which loans shall be secured by the real property sold and the terms of such loans shall be in accordance with otherwise applicable lending rules and regulations.

(B) An association selling real

property under this section, may receive as a part of the consideration a promissory note which provides for complete payment within the terms and limits established by the applicable section of this chapter. To the extent generally accepted accounting principles recognize the transaction as a sale, the book value of the property may be omitted in calculating the amounts allowed to be invested by the association under the authority of this section, but in the event of foreclosure, then the property shall be recorded on the books of the association as foreclosed real estate. In the event an appraisal was secured at the time of original investment, which supported the amount of the investment, then no appraisal shall be required as to the value of the real property sold if the sale exceeds the association's investment in said real property. Otherwise, a current appraisal is required to support the loan.

(4) No investment pursuant to the authority granted in this section shall be held by an association more than five years, unless the commissioner shall have extended in writing the time in which such disposition shall be made.

(5) No association or subsidiary of an association may, directly or indirectly, purchase or lease from, jointly own with, or sell or lease to, an affiliated person of an association any interest in real property, nor shall any affiliated person of an association have any interest in the proceeds of an investment made by the association to acquire real property under this section or to construct or modernize improvements on such real property, without the prior written approval of the commissioner. All requests for approval of an affiliated person transaction described in this subsection shall be supported by an independent appraisal not prepared by an affiliated person or employee of the association or subsidiary and shall be approved in advance by a resolution

unanimously adopted by the board of directors, at a duly constituted meeting, after full disclosure of all relevant factors pertaining to such transaction. Full disclosure must include the affiliated person's source of financing for the real property involved in the transaction, including whether the affiliated person has any deposit relationship with or is an affiliated or controlling person of any financial institution or holding company affiliate thereof providing the financing. The commissioner may approve an affiliated person transaction if he shall have affirmatively found from the data submitted with the application that the transaction is fair to and in the best interest of the association or subsidiary.

(6) If the commissioner finds that an association has abused or is abusing the authority granted in this section, the commissioner may, by using personal discretion, deny such association the right to future exercise thereof until such abuse or abuses have been corrected.

(7) A state chartered savings association, domiciled and authorized to do business in Texas, or its wholly owned subsidiary, may participate in the purchase, investment in, and the development and improvement of real property as provided in this section, with other state chartered savings associations, federal savings and loan associations, commercial banks or mutual banks insured by the FDIC, the wholly owned subsidiaries of the foregoing, or an individual, firm, or corporation having sufficient financial resources to carry out its obligations with respect to the venture.

(8) An association may not invest more in space actually occupied by the association in office buildings than an amount equal to its net worth as reflected by its books at the time of such investment unless the investment of a greater amount is authorized by the

commissioner in writing. However, the amount so invested in office buildings shall not be included in calculating the amount invested in real property pursuant to this section.

(9) No association shall carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, as calculated in accordance with generally accepted accounting principles, unless the commissioner has specifically approved in writing a higher valuation. An association selling real estate shall account for the sale in accordance with generally accepted accounting principles.

(10) An association shall appraise every parcel of real estate at the time of acquisition, and upon completion of any permanent improvements. The association shall obtain from the appraiser a certificate stating whether the improvements have been completed in accordance with plans and specifications, and stating any difference in value caused by variations from plans and specifications. The report of such appraisal shall be in writing and kept in the records of the association.

(11) Real estate acquired in satisfaction or partial satisfaction of debt, or in the ordinary course of the collection of loans and other obligations owing the association shall be held by an association for no more than five years, unless the commissioner extends in writing the holding period for such property.

(12) Subject to paragraph (13) of this section, when real estate is acquired in accordance with paragraph (11) of this section, an association must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is less than \$250,000.

(13) An additional appraisal or evaluation is not required when an association acquires real estate in accordance with paragraph (11) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than one (1) year old.

(14) An evaluation shall be made on all real estate acquired in accordance with paragraph (11) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of \$250,000.

(15) Notwithstanding any other provision of this section, the commissioner may require an appraisal of real estate if the commissioner considers an appraisal necessary to address safety and soundness concerns.

§65.20 Investments in Deferred Payment Obligations

Any association may invest its funds in deferred payment obligations, either secured or unsecured, arising out of loans made by others, and in deferred payment obligations arising out of installment sales contracts, provided, in respect to each obligation, that:

(1) the obligation is in the form of a promissory note and, the association is indemnified against any and all claims and defenses the debtor may assert against the association for defects, misrepresentation, breach of warranty, non-delivery, common law fraud, and lack of or failure of consideration;

(2) as to any obligation arising under the Consumer Credit Title of the Finance Code, and any amendments to or revisions thereof, the investing association is indemnified

against any and all claims and defenses the debtor may assert against the association for defects, misrepresentation, breach of warranty, non-delivery, common law fraud, and lack of or failure of consideration;

(3) as to all obligations subject to the Consumer Credit Title, the requirements of that title have been fully met;

(4) all obligations purported to be secured by personal property are accompanied by a security agreement and a financing statement capable of perfecting a security interest in said property in the holder;

(5) all obligations purported to be secured, arising out of transactions concerning improvements to real property, shall be accompanied by either a security agreement and a financing statement capable of perfecting a security interest in the holder in any fixtures constituting security or any instrument creating a valid lien on the real estate improved, whichever is appropriate to the transaction;

(6) the investing association could have made a direct loan to the obligor for the amount of the cash advance or principal balance of the obligation and for the repayment period thereof under this chapter.

§65.22 Restriction on Loan Procurement Fees

§65.23 Restrictions on Loan Transactions with Third Person

(a) No association or subsidiary of an association may, either directly or indirectly:

(1) make any loan to, or purchase (other than through a secondary market such as the Federal Home Loan Mortgage Corporation) any loan made to any third party on the security of property purchased from any

affiliated person of such association, unless the property was a single family dwelling owned and occupied by the affiliated person as his principal residence;

(2) make any loan to, or purchase any loan made to, any third party secured by real property with respect to which any affiliated person of the association holds a security interest;

(3) accept the stock, bonds, notes, or other security of any affiliated person of the association as security for a loan to any third party made or purchased by such association or subsidiary thereof;

(4) maintain a compensating balance with respect to a loan made by any third party to any affiliated person of such association; or

(5) enter any guarantee arrangement or make any take out commitment with respect to a loan made by any third party to any affiliated person of the association.

(b) The restriction contained in this section may be waived by the commissioner if the commissioner determines that the terms of the transaction in question are fair to and in the best interest of the association or subsidiary.

Chapter 67. Savings and Deposit Accounts

§67.3 Method of Computing Dividends

An association may, by resolution of its board of directors, provide for the following.

(1) The declared dividend or interest rate shall be applied to the funds comprising the account balance for the period of time such funds are credited to the account. For the purpose of computing time credited, any money tendered to the association for addition to an account shall be considered as credited to such account as of the date of actual receipt

thereof by the association except that the board of directors of an association may provide by appropriate resolution that money tendered to the association on or before the 20th day of a calendar month (or if such 20th day is a nonbusiness day, the next business day) shall for the purpose of computing earnings be considered as credited as of the first day of such calendar month. If such a resolution is adopted, it shall also specify the manner in which money tendered to the association after such 20th day or other designated day shall be credited for the purpose of computing earnings. The board of directors may also, by appropriate resolution, provide that total or partial withdrawals from savings or deposit accounts made during the last three business days of any earning period, be permitted to receive full earnings on such savings or deposit accounts, as if such withdrawals had been made immediately after the closing of such period.

(2) The dividends or interest on amounts withdrawn from regular savings or deposit accounts between (or during) successive dates on which said association regularly distributes earnings may be computed and paid or credited for the period of time beginning on the date of actual receipt to the date of withdrawal, and in such event shall be at a rate not in excess of the rate at which earnings are distributed on other regular savings or deposit accounts for the earning period.

§67.4 Advertisements or Public Representations of Account Earnings

§67.6 Provisions for Distribution of Earnings on Other Than Regular Accounts

Subject to the provisions of this section, the board of directors of an association may provide for the distribution or payment of earnings on other than regular accounts, provided the account is represented by a certificate of savings or certificate of deposit

of not more than 10 years in a form approved by the savings and mortgage lending commissioner of Texas.

§67.7 Notice Prior to Withdrawal

An association may specially contract with the holder of a regular savings or deposit account whereby such holder agrees to give notice for a period of 90 days or more immediately prior to making any withdrawal from such account. Such contract may further provide that such notice will not be required for a withdrawal at the end of an earnings period or within ten days thereafter if said account has been open for no more than 90 days, and the association agrees to pay dividends or earnings on said account at a rate higher than the regular savings account rate. An association may adopt procedures providing for waiver of the notice for withdrawal from such account on an emergency basis.

§67.8 Deposit Accounts

(a) Deposit accounts are hereby authorized for state-chartered associations, provided that each association desiring to use the deposit account shall, by appropriate resolution of its directors and appropriate amendment of its bylaws by its members thereof, approve such type of account.

(b) In connection with various types of deposit accounts the form of certificates and/or savings accounts to be used shall be submitted to the savings and mortgage lending commissioner for review.

(c) In the event that an association adopts and becomes a deposit institution as provided for in this section, then it may continue to maintain its existing accounts as regular savings accounts and certificate of savings accounts until the same are converted to deposit accounts or certificates of deposit by the holders thereof.

§67.10 Joint Issuance of Capital Obligations

On the same terms and conditions as stated in §67.9 of this title, an association may, by resolution of its board of directors and with prior approval of the savings and mortgage lending commissioner of the State of Texas, join other associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if done in accordance with the terms and conditions of §67.9 of this title.

§67.11 Required Average Daily Balance of Liquid Assets; Failure to Meet Requirement

State-chartered associations offering accounts not insured by the Federal Deposit Insurance Corporation shall maintain an average daily balance of liquid assets in an amount determined by the commissioner. An association failing to meet this requirement shall be restricted to loans on one-to-four family dwellings only and are subject to the limitations provided elsewhere in this chapter.

§67.12 NOW Accounts

Any association may, when authorized by its board of directors, permit the withdrawal of funds from savings accounts by means of negotiable orders of withdrawal payable to third parties, provided that all documentation meets applicable statutory and regulatory requirements.

§67.13 Checking Accounts

Any association may when authorized by its board of directors, permit the withdrawal of funds from deposit accounts (whether interest-bearing or not) by means of checks to the order of third parties drawn by the account holder and payable by the association upon presentation in accordance with the Uniform

Commercial Code of this state.

§67.14 Approval of the Commissioner

§67.15 Noninterest-Bearing Deposit Accounts

Any association may when authorized by its board of directors, raise capital in the form of deposit accounts having all of the rights and privileges of its regular deposit accounts except the right to the receipt of interest, provided the holder of such an account has expressly waived in writing all rights to receive interest.

§67.17 User Safety at Unmanned Teller Machines

(a) Definitions. Words and terms used in this chapter that are defined in the Finance Code, §59.301, have the same meanings assigned in that section.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in

writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at a minimum the factors identified in the Finance Code, §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if

permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the

access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned teller machines located in a bank vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of compliance. The security officer of each depository shall certify compliance with the Finance Code, Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

Chapter 69. Reorganization, Merger, Consolidation, Acquisition, and Conversion

§69.2 Form and Content of Application

The application for approval of the plan shall be titled "Application to Reorganize, Merge and/or Consolidate" and shall contain: proof that the plan was adopted by the board of directors of each association, federal association, foreign association, state or national bank, or state or federal savings bank involved; documentation showing that the plan has been approved by a majority of each involved entity's voting members or shareholders entitled to cast a vote; a statement that the corporate continuity of the

resulting institution shall possess the same incidents as that of an entity which has converted in accordance with the Texas Savings and Loan Act; and a statement that the home office of the entity with the largest asset size shall be the home office of the resulting entity unless otherwise approved by the commissioner. A true copy of the plan, as adopted, shall be filed as part of the application. All documents and their contents shall be subscribed and sworn to by an officer of each entity involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

§69.3 Use of Approved Forms

Upon request, the commissioner shall furnish forms which may be used to file an application. After the application has been filed, the commissioner may conduct an investigation of the application.

§69.4 Notice and Hearing

Each application will be set to be heard within 90 days of filing. Notice will be sent by mail to those state and federal savings associations with offices in the same counties as any of the offices of the applying association. If, from the evidence adduced at hearing, the commissioner finds that the applicable criteria for approval of the application set forth in the Texas Savings and Loan Act are met, the commissioner shall enter an order approving the application.

§69.5 Publication

The associations involved in an application must publish notice at least 20 days before the date of hearing in a newspaper or newspapers of general circulation in the county or counties where said associations have offices, and file proof of such publication with the commissioner at least 10 days prior to hearing.

The form of notice shall be as follows: "Notice is hereby given that application has been made to the savings and mortgage lending commissioner of Texas by (association(s)) for approval to (reorganize, merge, and/or consolidate) pursuant to §62.351 of the Texas Savings and Loan Act. A plan of (reorganization, merger, and/or consolidation) and related documents have been filed with the commissioner. Notice is further given that a hearing on this application has been set for (date) at (time) in (place) pursuant to authority and jurisdiction granted by the Texas Savings and Loan Act. The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application. The applicants assert that the plan of (reorganization, merger, and/or consolidation) meets the criteria for approval set forth in the statutory sections cited in this notice. Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the Commissioner at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location. Issued this (date) at Austin, Travis County, Texas."

§69.6 Time of Decision

The commissioner shall render a decision on an application under this chapter within 60 days of the date the hearing is closed.

§69.7 Denial and Appeal

(a) The commissioner shall issue an order denying the proposed plan if the commissioner

finds that:

(1) the reorganization, merger, or consolidation would substantially lessen competition or be in restraint of trade and would result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state, unless the anticompetitive effects of the proposed reorganization, consolidation, or merger are clearly outweighed by public interest, considering the likelihood of meeting the needs of the community to be served;

(2) in a merger or consolidation, the financial condition of either entity would jeopardize the financial stability of any association that is a party to the plan;

(3) the proposed plan is not in the best interest of any association that is a party to the plan;

(4) the experience, ability, standing, competence, trustworthiness, or integrity of the management of the entities proposing the plan is such that the reorganization, merger, or consolidation would not be in the best interest of the associations that are parties to the plan;

(5) after reorganization, merger, or consolidation the surviving entity would not be solvent, would not be adequately capitalized, or would otherwise fail to be in compliance with the laws of this state;

(6) the entities proposing the plan have not furnished all of the information pertinent to the application reasonably requested by the commissioner; or

(7) the entities proposing the plan are not acting in good faith.

(b) Any appeal of an order or action of the commissioner shall be made pursuant to the

Government Code, Chapters 2001 and 2002, and Chapter 61 and §62.204 of the Texas Savings and Loan Act.

§69.8 Exemption for Supervisory Merger

When the commissioner designates a merger to be a “supervisory merger,” the provisions of this chapter relating to reorganization, merger, and/or consolidation in §§69.1-69.7 of this title, shall not be applicable, and the merger shall be effected pursuant to the Texas Savings and Loan Act, §62.051.

§69.9 Designation as Supervisory Merger

(a) The commissioner may designate a merger to be a “supervisory merger” when:

(1) the commissioner has placed one or more of the associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act, Subchapter I; or

(2) the commissioner has determined that one or more of the associations subject to the Savings and Loan Act or savings banks subject to the Texas Savings Bank Act is in an unsafe condition; or

(3) the Office of Thrift Supervision, Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or their successor has determined, and certified to the commissioner, that the merger of a federal association or savings bank, or a state or national bank having its home office in the state and an association subject to this Act is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition shall mean that an association is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any

violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that an association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth; or that an association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the association and the commissioner; or that an association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of an association by the commissioner or other duly authorized personnel of the Department of Savings and Mortgage Lending; or any other condition affecting an association which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

§69.10 Acquisitions Involving Associations in Other States or Territories

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, an association may acquire, by merger or purchase of stock, an association incorporated under the laws of another state. Each such application shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state regulatory authority of the foreign association approving the merger or acquisition, or other evidence satisfactory to the commissioner that all state regulatory requirements have been satisfied. The hearing and notice requirements and provisions in this chapter that apply to a similar application involving another association in this state apply to an application under this section. The commissioner shall approve an application under this section if the commissioner finds, from the data furnished with the application, the evidence adduced at the hearing, and the department records, that all requirements of

this chapter applicable to the proposed merger or acquisition have been met, and that all applicable requirements of the laws of the state of the foreign association have been met.

§69.11 Conversion into another Financial Institution Charter

(a) The commissioner may authorize any association subject to this title to convert itself into another type of financial institution subject to applicable law and regulation relating to the type of institution into which the association seeks to convert.

(b) In order to obtain such authorization, the converting association must adopt, by a majority vote of the members or shareholders of the association entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the association shall be so converted. The association shall then file with the commissioner a written application accompanied by:

(c) The commissioner may approve a conversion if the commissioner finds that:

(1) the conversion will not substantially lessen competition or restrain trade and will not result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or savings bank industry in any part of the state, unless the anticompetitive effects of the proposed conversion are clearly outweighed by public interest considering the likelihood of the result meeting needs of the community to be served;

(2) the proposed conversion will not cause undue harm to the public interest or to any other existing association; and

(3) the proposed conversion is not contrary to the best interests of the customers,

creditors, and stockholders of the converting association and of the public in general.

(d) Within ten days after receipt of an application to convert, the commissioner shall either consent to such conversion in writing or call a hearing to consider whether such proposed conversion complies with the conditions set forth in this section. Such hearing shall be held within 25 days after the filing of the conversion application unless a later date is agreed to by the association and the commissioner. Such a hearing shall be conducted by the commissioner, or a hearing officer designated by the commissioner, as a contested case in compliance with the provisions of Chapter 2001 of the Texas Government Code, except that no proposal for decision shall be made and a final decision or order must be rendered by the commissioner within 15 days after the close of the hearing. The provisions of Chapter 2001 of the Texas Government Code, with respect to motions for rehearing and judicial review, shall be available to the association in the event the commissioner denies the application for conversion.

(e) If the commissioner consents to such conversion, the association, within three months after the date of the commissioner's consent, shall take such action in the manner prescribed and authorized by applicable laws to consummate the conversion into another financial institution, and shall file with the commissioner a copy of the charter issued to the new financial institution by the appropriate banking agency or a certificate showing the organization of the new financial institution certified by the secretary or assistant secretary of the appropriate banking agency. However, failure to file such instrument with the commissioner shall not affect the validity of any such conversion.

Chapter 71. Change of Control

§71.1 Introduction

It having been declared and found by the legislature of the State of Texas that this state shall exercise regulatory authority over the savings and loan industry authorized to do business under the laws of the State of Texas, and as it is hereby further declared and found by the savings and mortgage lending commissioner that the public interest and the interests of account holders are or may be adversely affected when control of an association is sought by persons who would utilize such control adversely to the interests of account holders, it is hereby declared that the policies and purposes of this regulation are to promote the public interest by requiring disclosure of pertinent information relating to approval of changes in control of a savings and loan association. Notwithstanding any other provision of this chapter, the Federal Deposit Insurance Corporation shall not be deemed subject to this chapter.

§71.2 Definitions

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

(1) Affiliate--An affiliate of, or person affiliated with, a specific person, is a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with, the person specified.

(2) Affiliated person--The term "affiliated person" of an association means the following:

(A) a director, officer, or controlling person of such association;

(B) a spouse of a director, officer, or controlling person of such association;

(C) a member of the immediate family of a director, officer, or controlling person of such association who has the same home as such person or who is a director or officer of any subsidiary of such association or of any holding company affiliate of such association;

(D) any corporation or organization (other than the association or a corporation or organization through which the association operates) of which a director, officer, or controlling person of such association:

(i) is an officer;

(ii) is a general partner;

(iii) is a limited partner who, directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, owns an interest of 25% or more in the partnership; or

(iv) directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the associations, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officer, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such association or the spouse of such person has a substantial beneficial interest or as to which

such person or their spouse serves as trustee or in a similar fiduciary capacity.

(3) Association--Shall include all savings and loan associations organized or chartered under the laws of this state. For purposes of this chapter association shall include any other person controlling an association.

(4) Commissioner--The Savings and Mortgage Lending Commissioner.

(5) Control--The term "control" including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an association by direct or indirect means. Control shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of any association. The commissioner may determine, based upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of an association as to make it necessary or appropriate in the public interest and for the protection of the account holders of an association that the person be deemed to control the association. There shall be a presumption of control if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 10% or more of the voting securities of an association. Such person may, by application to the commissioner, seek to rebut that control presumption.

(6) Issuer--The association which has issued the security in question.

(7) Person--An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(8) Voting security--Shall include any security convertible into or evidencing a right to acquire a voting security.

§71.3 Acquisition of an Association

The following procedures shall be followed when a person desires to acquire control of an association.

(1) General filing requirements. No person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of an association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such association, unless such person has filed with the commissioner all of the following information on an application form approved by the commissioner and which application form is deemed by the commissioner to be complete, accompanied by the application fee prescribed in §63.11 of this title, and has received a written order from the commissioner approving such acquisition or change of control.

(A) The background and identity of the applicant, if said applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the

applicant if the applicant is not an individual. Said filing shall contain the following information:

- (i) name and address;
- (ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;
- (iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;
- (iv) whether such individual is presently charged with or has ever been convicted of a violation of the law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;
- (v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, nature of conviction, case number, name and location of the court, and disposition of the suit;
- (vi) whether any such individual has been or is a party to any federal, state, or municipal, court lawsuit, or governmental

agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and, if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case, and any other relevant information requested by the commissioner.

(B) If applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof shall have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there shall be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such associations, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guaranties given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the association's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the association in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the commissioner determines are relevant to the review of the application; and

(J) any other relative information requested by the commissioner.

(2) Partnerships and others. If the person required to file the information referred to in this chapter is a partnership, limited partnership, syndicate, trust, or other group, the commissioner may require that the information shall be given with respect to:

(A) each partner of such partnership or limited partnership;

(B) each member or such syndicate or group; and

(C) each person who controls such partner or member.

(3) Corporations. If the person required to file the information referred to in this section is a corporation, the commissioner may require that the information called for shall be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the

outstanding voting securities of such corporation.

(4) Approval. The transaction for acquisition of control of an association may not be consummated until the commissioner approves the application for acquisition of control. The commissioner shall render his decision within 60 days after the application required by paragraph (1) of this section has been filed with and deemed complete by the commissioner. The commissioner shall deny an application for acquisition of control of an association if he finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state, unless he also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the poor financial condition of any acquiring party might jeopardize the financial stability of the association being acquired;

(C) plans or proposals to liquidate or sell the association or its assets are not in the best interest of the association;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the association;

(E) the association will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner;

(G) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the association or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the association has been evidenced; or

(H) the applicant is not acting in good faith.

(5) Amendments. If any material change occurs in the facts set forth in the application and any documents filed with the Department of Savings and Mortgage Lending, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.

§71.4 Hearings

(a) The commissioner may set and hold a hearing on an application for acquisition of control of an association if deemed desirable to accumulate a complete record of pertinent information and data in support of approval or denial of application. If the commissioner issues a written order denying an application for acquisition of control, the disapproved applicant is entitled to a public hearing on such application.

(b) Proceedings for a hearing on a denied application shall be instituted by the applicant's filing a written petition for hearing before the 31st day after the notice of intent to deny is mailed to the proposed transferee.

(c) The commissioner shall provide the applicant notice of not less than 10 days specifying the time, date, and place of the hearing.

(d) Opportunity shall be afforded the applicant to present evidence and argument on those issues involved.

(e) The record of the hearing shall consist of:

(1) all pleadings, motions, and intermediate rulings;

(2) the application for acquisition of control and all accompanying documents;

(3) all evidence received and considered;

(4) a statement of those matters officially noticed;

(5) a written transcript of the proceedings, the cost of which shall be assessed to the applicant; and

(6) any other matters or documents required by statute or regulation.

(f) The final decision or order of the commissioner shall be rendered within 30 days after the date the hearing is finally closed. The commissioner may prescribe a longer period of time within which the final decision or order shall be issued, and such extension shall be announced at the conclusion of the hearing.

§71.5 Retention of Control

(a) The following conditions affecting any controlled association, regardless of when or how such control has been acquired, are grounds for the commissioner to investigate, seek to enjoin, or set aside any change of control of an association, if the commissioner

deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by an association, or other demonstration of untrustworthiness by the association, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the association; or

(2) the violation of any antitrust law of this state by the association, the holding company, or any affiliate.

(b) The commissioner may require the submission of such information as deemed necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the association, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of an association. If the commissioner finds that such unauthorized control exists the commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the commissioner may issue any other supervisory order deemed appropriate.

§71.6 Application for Approval of the Acquisition of Control of a Savings and Loan Association

The application form is available from the department, 2601 North Lamar, Suite 201,

Austin, Texas 78705.

§71.7 Abeyance of Other Applications

When an application for approval of acquisition of control of an association has been received by the commissioner and the association also has other applications on file with the commissioner, such applications may, at the commissioner's discretion, be held in abeyance until the change of control application has been disposed of by the commissioner.

§71.8 Exempt Transactions

The following transactions are exempt from the application requirements of this chapter:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of an association which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the commissioner within 30 days and provided further that the acquiror shall not retain such control for more than one year from the date on which such control was acquired. The commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection shall prevent such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same;

(3) acquisition of additional stock of an association by any person who has held power to vote 25% or more of any class of voting stock in such association continuously for the three-year period preceding such acquisition, or has maintained control of the association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

Chapter 73. Subsidiary Corporations

§73.1 Investment in and Divestiture of Subsidiary Corporations

(a) As used in this chapter, corporation shall mean any subsidiary, whether owned directly or indirectly, wholly or partially. Subsidiary shall mean any company which is controlled by the association or by a company which is controlled, directly or indirectly, by the association. For purposes of this section an association shall be deemed to have control of a company if the association directly or indirectly, or acting in concert with one or more other persons or entities, or through one or more subsidiaries, owns, controls, or holds with the power to vote, or holds proxies representing, more than 25% of the voting shares of such company, or controls in any manner the election of a majority of the directors of such company, or is a general partner in or has contributed more than 25% of the capital of such company.

(b) An association may, only after prior written approval of the commissioner, invest in a corporation in accordance with the terms and conditions set forth in this chapter. The commissioner may approve an investment in a corporation if the commissioner finds that:

(1) there are no supervisory problems which would affect its ability to properly supervise and operate such corporation;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the corporation will be clearly distinguishable from those of the parent association; and

(4) the corporation is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the association.

(c) If the commissioner finds that an association has abused or is abusing the authority granted in this chapter, the commissioner may at his or her discretion deny such association the right to future exercise investments in subsidiary and engage in activities thereof until such abuse or abuses have been corrected.

(d) Subsequent to obtaining approval for its initial investment and activity, a corporation may not engage in additional or substitute activities without the prior written approval of the commissioner.

(e) An association may, with prior written approval of the commissioner, divest itself of the stock or assets of a subsidiary corporation if the commissioner finds that the terms and conditions of the divestiture are in the best interests of the association.

§73.2 Application

(a) In order to obtain such approval, the applying association shall file with the commissioner an application form accompanied by the following:

(1) an audited financial statement in the event of acquisition of an existing corporation;

(2) a certified resolution of the board of directors of the applying association approving the investment in the corporation;

(3) a certified copy of the certificate of formation, and bylaws of the corporation;

(4) the acquisition terms, cost, or investment requirements of the association;

(5) projected operating statements of the proposed corporation for its first three years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent association and corporation liability;

(7) an outline of plans for operation of the corporation;

(8) evidence that the corporation will have adequate management and operating personnel with proper supervision by association management;

(9) plans for the safeguarding of corporate assets;

(10) affidavits from all directors of an association and corporation fully disclosing any interest they may directly or indirectly have in the proposed or existing corporation; and

(11) such other information or data as the commissioner may require.

(b) Records of the corporation will be made available at all times to state and federal supervisory authorities for examination and review.

(c) The corporation will keep complete and adequate books and records in accordance with generally accepted accounting principles

where there are no specific accounting guidelines set forth by the rules of the Department of Savings and Mortgage Lending or the regulations of the Federal Deposit Insurance Corporation.

§73.3 Authorized Subsidiary Investments

(a) Activities of a corporation performed directly or indirectly through one or more wholly owned or partially owned corporations or joint ventures, with prior approval of the commissioner, shall consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the association's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for association offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the commissioner.

(b) A corporation shall not, without prior approval of the commissioner, invest in the stock of any savings and loan association.

(c) A corporation shall not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, nor shall it perform any duties for the association other than those specifically authorized in this section.

(d) The association shall maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the commissioner, which shall be made available at all times to state and federal supervisory authorities for examination and review.

§73.4 Operations

(a) The association shall obtain prior written approval of the commissioner for the establishment and location of the main office, and any branch office, agency office, or any other office or facility of the corporation.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments shall be furnished to the association within 30 days from date of execution.

(c) The corporation agrees to furnish, at the expense of the corporation or association, an independent appraiser's report or other expert opinion as determined to be necessary by the commissioner for the purpose of establishing the value of any investments made by the corporation.

(d) Each corporation shall maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the corporation from loss. Coverage as an additional insured entity under a fidelity bond of the parent association or its holding company may satisfy this requirement.

(e) All joint ventures and partnership agreements shall be reviewed by the attorney for the corporation who shall render their opinion to the commissioner stating the obligation and responsibility of the corporation, as well as the parent association.

(f) All directors of the association and

corporation shall furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(g) Each request for approval of an investment by a corporation shall include a projected cash flow statement and a projected profit and loss statement setting forth funding requirements of the parent association and/or other corporations.

§73.6 Operating Subsidiaries

A savings and loan association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings and loan association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings and loan association, operating subsidiary investment is not included as part of the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §73.5(a) of this title. Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary corporation apply equally to an operating subsidiary.

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 Texas Administrative Code (TAC), Chapters 75-77 Concerning Savings Banks, Resulting from Rule Review.

PURPOSE: The purpose of the adopted amendments and repeal is to implement changes resulting from the commission's review of Chapters 75-77 under Texas Government Code, §2001.039. Amendments to Chapter 75, Subchapter A, are adopted for gender neutrality, to streamline the application process by making hearings contingent on the receipt of a protest to an application. Repeal of Section 75.4 is adopted as it is redundant with Tex. Fin. Code §91.004. Adopted amendments to Chapter 75, Subchapter C, Section 75.33 are to replace a gender specific reference in referring to the commissioner with a reference to the department. Adopted amendments to Chapter 75, Subchapter D, are proposed to include the standardization of hearing and application processes across application types, gender neutralization of references to the commissioner, clarifications in language and titles, and updates in terminology. Adopted amendments to Chapter 75, Subchapter E, are proposed to provide gender neutral references. Adopted amendments to Chapter 76, Subchapter A, include clarification of the permissibility of electronic records, updated requirements for annual financial audits and the treatment of bad debts, and updated statutory references related to the bylaws of state savings banks. Amendments to Chapter 76, Subchapter B, are adopted to include updates of capital definitions consistent with prevailing accounting guidance and replacement of terms to clarify the applicability of this subchapter to state savings banks. Amendments to Chapter 76, Subchapter E, Section 76.21 are adopted to addresses the use of a hearings officer for state savings bank matters. The adopted amendments eliminate unnecessary words in reference to applicable statutes and the correct agency name. Amendments to Chapter 76, Subchapter F, are adopted to include clarifying language and a replace public information fees with a reference to those set by the Texas Attorney General. Amendments to Chapter 76, Subchapter H, Section 76.122 are adopted to address consumer complaint procedures relating to state savings banks. The adopted amendments correct the name of the department and replace a contact fax number. Amendments to Chapter 77, Subchapter A, are adopted to include clarifying language, enhance consistency with federal regulations, update federal agency references, and for the neutralization of gender references. Amendments to Chapter 77, Subchapter B, Section 77.116 are adopted to address the pledging of state savings bank assets to secure deposits. The adopted amendments make state savings bank powers consistent with those of other types of charters.

RECOMMENDED ACTION: The Department recommends that the Commission adopt the amendments and repeal in 7 TAC, Chapters 75-77.

RECOMMENDED MOTION: I move that we adopt the amendments and repeal to 7 TAC Chapters 75-77 in the *Texas Register* for comment.

Title 7. Banking and Securities
Part 4. Texas Department of Savings and Mortgage Lending
Chapter 75. Applications
Chapter 76. Miscellaneous
Chapter 77. Loans, Investments, Savings and Deposits

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), regarding state savings banks, adopts 7 Texas Administrative Code: Chapter 75 amendments concerning Applications and repeal of §75.4 without changes; Chapter 76, amendments concerning Miscellaneous with changes to §76.122(b); and Chapter 77, amendments concerning Loans, Investments, Savings and Deposits without changes to the proposed text as published in the March 4, 2016, issue of the Texas Register (41 TexReg 1567) and will not be republished.

In general, the purpose of the adoptions regarding these rules is to implement changes resulting from the commission's review of the state savings bank chapters, under Texas Government Code §2001.039.

In Chapter 75, Subchapter A, the adopted amendments include the gender neutralization of references to the Commissioner, and a streamlining of the charter application process making hearings contingent on receipt of protest to the application.

Section 75.1 addresses applications to organize a state savings bank. The adopted amendments make references to the Commissioner gender neutral and update an accounting term.

Section 75.2 deals with hearings on charter applications for state savings banks. The adopted amendments streamline the application process by requiring a hearing only when protest is received, similar to processes in place for other types of charters. Additional adopted amendments make

references to the Commissioner gender neutral.

Section 75.3 addresses the public notice of a state savings bank charter application. The adopted amendments streamline the application process by tying the publication to the application rather than a hearing, which may not be required as adopted in the amendments to §75.2. An additional adopted amendment clarifies that, when this section is applied to other types of applications, publication must occur in the home office area of the state savings bank and in the area of each proposed branch office.

Section 75.4 is redundant with the existing and applicable statute, Texas Finance Code §91.004. Repeal removes the possibility of conflicts between the regulation and statute. The repeal of section 75.4 is adopted.

Section 75.5 addresses the proof of publication of a state savings bank charter application as required by §75.3. The adopted amendments again streamline the application process by tying the publication to the application rather than a hearing, which may not be required as adopted in the amendments to §75.2, and remove unnecessary words in reference to another section of this title.

Section 75.6 addresses the deadline for a state savings bank charter application decision. The adopted amendments streamline the application process by tying the decision to the application rather than a hearing, which may not be required as adopted in the amendments to §75.2, and remove unnecessary words in reference to another section of this title.

Section 75.10 addresses the approval process for a state savings bank to change its name. The adopted amendment makes a reference to the Commissioner gender neutral.

There are no amendments to Chapter 75, Subchapter B.

In Chapter 75, Subchapter C, the adopted amendments include the gender neutralization of references to the Commissioner, an update on one accounting term, and the elimination of duplicative text.

Section 75.33 addresses state savings bank branch applications. The adopted amendment replaces a gender-specific reference to the Commissioner with a reference to the Department.

Section 75.35 addresses applications for state savings bank mobile facilities. The adopted amendments make references to the Commissioner gender neutral.

Section 75.36 addresses the designation of a state savings bank purchase of assets or offices to qualify as a supervisory sale. The adopted amendment updates one accounting term from “net worth” to “capital.”

Section 75.38 addresses location changes for state savings bank offices. The adopted amendments make references to the Commissioner gender neutral.

Section 75.41 addresses the application process for a state savings bank to establish an office outside of Texas. The adopted amendments make references to the Commissioner gender neutral and remove the duplication of text.

In Chapter 75, Subchapter D, the adopted amendments include the standardization of hearing and application processes across

application types, gender neutralization of references to the Commissioner, clarifications in language and titles, and updates in terminology.

Section 75.83 addresses the notice and hearing requirements for merger and similar applications of state savings banks. The adopted amendments standardize hearing and application processes by referring to requirements set forth in other sections of this title.

Section 75.84 addresses the publication requirement for merger and similar applications of state savings banks. The adopted amendments standardize application processes by referring to requirements set forth in other sections of this title, also removing the attached graphic included with the section.

Section 75.85 addresses the decision period for merger and similar applications of state savings banks. The adopted amendments make a reference to the Commissioner gender neutral and standardize application processes by referring to requirement set forth in other sections of this title.

Section 75.86 addresses the appeal process for merger and similar applications of state savings banks. The adopted amendment clarifies a reference to applicable statutes.

Section 75.87 addresses the criteria for qualifying a merger or similar transaction of a state savings bank to be a supervisory merger. The adopted amendment updates an accounting term by replacing “net worth” with “capital.”

Section 75.88 addresses state savings bank acquisitions involving financial institutions outside of Texas. The adopted amendments correct the rule title and make references to the Commissioner gender neutral.

Section 75.91 addresses the conversion of a state savings bank from a mutual to stock form of organization. The adopted amendment updates terms used.

In Chapter 75, Subchapter E, the adopted amendments are limited to gender neutralization.

In Chapter 76, Subchapter A, the adopted amendments include clarification of the permissibility of electronic records, updated requirements for annual financial audits and the treatment of bad debts, and updated statutory references related to the bylaws of state savings banks.

Section 76.1 addresses the proper maintenance of state savings bank books and records. The adopted amendments reflect current, prudent practices by explicitly permitting offsite electronic duplicate records.

Section 76.3 allows the reproduction of destroyed state savings bank records from copies in various permissible forms. The adopted amendment updates those forms to explicitly include electronic records.

Section 76.4 sets requirements for annual financial audits for state savings banks. The adopted amendments clarify the standards for those audits and related correspondence.

Section 76.6 describes appropriate accounting for charge-offs of, and reserves for, bad debts. The adopted amendment replaces specific guidance with a reference to the requirements of Generally Accepted Accounting Principles (GAAP).

Section 76.12 addresses bylaws of state savings banks. The adopted amendment updates references to applicable statutes and removes unnecessary words.

In Chapter 76, Subchapter B, the adopted amendments include updates of capital definitions consistent with prevailing accounting guidance and replacement of terms to clarify the applicability of this subchapter to state savings banks.

Section 76.21 describes minimum capital requirements for state savings banks. Adopted amendments update capital definitions for consistency with accounting principles and clarify the applicability to state savings banks.

Section 76.22 permits the Commissioner to increase or decrease minimum capital requirements for state savings banks. The adopted amendments clarify the applicability of this section to state savings banks, update one accounting term by replacing “net worth” with “capital,” and remove unnecessary words in reference to another section of this title.

There are no amendments to Chapter 76, Subchapters C and D.

In Chapter 76, Subchapter E, section 76.21 addresses the use of a hearings officer for state savings bank matters. The adopted amendments eliminate unnecessary words in reference to applicable statutes and correct agency names.

In Chapter 76, Subchapter F, the adopted amendments include clarifying language and a replacement of public information fees with reference to those set by the Texas Attorney General.

Section 76.95 sets the fee for special examinations or audits of state savings banks. The adopted amendments provide clarifying language.

Section 76.98 describes the annual assessment fee required for a state savings bank to do business in Texas. The adopted amendments provide clarifying language.

Section 76.99 sets the fees for a state savings bank to reorganize, merge, and/or consolidate. The adopted amendments provide clarifying language and remove unnecessary words in reference to other sections of this title.

Section 76.108 sets fees for public information requests relating to Department records of state savings banks. The adopted amendments replace specific fees with reference to the fees adopted by rules of the Texas Attorney General.

There are no amendments to Chapter 76, Subchapter G.

In Chapter 76, Subchapter H, Section 76.122 addresses consumer complaint procedures relating to state savings banks. The proposed amendment would have corrected the name of the Department and would have replaced specific contact information with a reference to the Department's website. An intra-agency comment was received leading to further discussion on the proposed amendment to this rule. As a result the Department subsequently modified the Section and the commission adopts the language to retain the original wording of the Section with the only exceptions being a change in the consumer complaint fax number and the corrected name of the Department.

In Chapter 77, Subchapter A, the adopted amendments include clarified language, enhanced consistency with federal regulations, updated federal agency references, and the neutralization of gender references.

Section 77.2 addresses limitations on loans to One Borrower from a state savings bank. The adopted amendment capitalizes "One Borrower" to clarify the use of a defined term.

Section 77.4 addresses requirements for home improvement loans made by state savings banks. The adopted amendments replace dated appraisal requirements with those in effect for federally-supervised institutions and clarify a statutory reference.

Section 77.5 addresses requirements for manufactured home loans made by state savings banks. The adopted amendments replace dated appraisal requirements with those in effect for federally-supervised institutions.

Section 77.8 addresses requirements for personal property loans made by state savings banks. The adopted amendment clarifies a statutory reference.

Section 77.31 addresses general loan policies and documentation for state savings banks. The adopted amendments provide clarifying terms, language, and capitalization; make gender references neutral; replace dated appraisal requirements with those in effect for federally-supervised institutions; and remove dated federal agency references.

Section 77.33 addresses loans made by state savings banks to insiders and affiliates. The adopted amendment enhances consistency with federal regulations.

Section 77.35 establishes definitions for use in this chapter. The adopted amendments make gender references neutral and re-style one term for clarity.

Section 77.51 addresses letters of credit issued by state savings banks. The adopted amendment clarifies the applicability of limits on loans to One Borrower.

Section 77.71 addresses state savings bank security investments. The adopted amendments update federal agency references.

Section 77.91 addresses state savings bank subsidiary investments. The adopted amendments make references to the Commissioner gender neutral.

Section 77.94 addresses operations of state savings bank subsidiaries. The adopted amendments provide clarifying language and that which may be conflicting.

In Chapter 77, Subchapter B, Section 77.116 address the pledging of state savings bank assets to secure deposits. The adopted amendments make state savings bank powers consistent with those of other types of charters.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

<Rules>

Chapter 75. Applications

Subchapter A. Charter Applications

§75.1 Application for Permission to Organize a State Savings Bank

(a) Applications for a state savings bank charter shall be filed with the commissioner on forms approved by the commissioner. The application and all required supporting information shall be executed by the proposed

incorporators of the proposed savings bank which shall consist of at least five adult residents of this state and shall include all of the information required in the Texas Savings Bank Act, §92.051. The application shall include a request for a corporate title to be approved by the commissioner and included in the savings bank's charter. The application shall include the proposed principal office of the savings bank, the identity and qualifications of the proposed managing officer, and any additional information as may be required sufficiently detailed and comprehensive to enable the commissioner to pass on matters set forth in the Texas Savings Bank Act, §92.058.

(b) The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of, or opposed to, the application upon which the commissioner shall make his determination of whether the application should be granted or denied. The commissioner may, in his discretion, make an independent investigation of matters raised in the hearing and, in the event he desires to base his decision on any evidence disclosed by such investigation which is not a part of the official record, he shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

(c) No application to incorporate a savings bank shall be approved unless the application and evidence produced at a hearing satisfy the commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in an amount not less than the greater of the amount required to

obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation or the amount required of a national bank. No savings bank with an approved charter shall open or do business as a savings bank until the commissioner certifies that the commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

(d) After the application and its supporting data have been received by the commissioner, the commissioner shall make or cause to be made an investigation of the application.

§75.2 Hearing on Charter Application

(a) Within 10 days after receiving any statement of intention to appear in person or by attorney to protest the application and required fee, the commissioner shall set a date for a hearing on the application, which date shall not be more than 60 days after the date the statement and fee are received. When requested by the proposed incorporators, a hearing shall be held on the application even though there are no persons who have indicated a desire to be heard against it. A hearing is not required if the proposed incorporators have not requested a hearing and no party has expressed intent to protest. Should a hearing be required, notice will be provided to interested parties in accordance with applicable laws and regulations.

(b) The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of, or opposed to, the application upon which the commissioner shall make a determination of whether the application should be granted or denied. The commissioner may, using personal discretion, make an independent investigation of matters

raised in the hearing and, in the event the commissioner desires to base a decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

(c) If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner prior to the publication of the notice of charter application. Any amendment filed thereafter shall be accepted only at the discretion of the commissioner. The commissioner may require additional publication of the amendment to the application.

§75.3 Publication of Notice of Charter Application

Within 15 days of receipt of the notice issued pursuant to §75.9 of this chapter, the proposed incorporators shall publish a notice, approved by the Commissioner, in a newspaper printed in the English language, and in general circulation in the county where the proposed savings bank will have its principal office. In cases where this section applies to a reorganization, merger, consolidation, conversion, purchase and assumption, acquisition, or branch application, publication shall occur in the county in which the savings bank has its principal office and in the county in which each proposed branch location will exist.

§75.4 Notice to Other Savings Institutions

§75.5 Filing of Proof of Publication

Within 10 days of publication, the proposed incorporators shall file proof of publication in the manner provided in §75.3 of this title with the commissioner.

§75.6 Time of Decision on Charter Application

The commissioner shall render a decision within 30 calendar days after the final ruling is issued if the hearing was held in accordance with §75.2 of this title, or 30 calendar days after the date the application is deemed substantially complete if the hearing is dispensed with, as the case may be.

§75.10 Change of Name

(a) A savings bank may not change its name without the prior approval of the commissioner, and a savings bank may not operate under any name which has not been approved by the commissioner. The commissioner may not approve an application by a savings bank to change its name unless the commissioner finds from the data furnished with the application, the evidence adduced at the hearing, and department records that the proposed change of name meets the applicable requirements of the Texas Savings Bank Act and this chapter, and does not violate other applicable law.

(b) As provided for new charter applications, notice must be given for change of name application. If protested, the commissioner shall consider the protest and may in the exercise of discretion set the application for hearing to consider the facts or obtain additional information.

Subchapter C. Additional Offices

§75.33 Branch Office Applications

(a) Each application for permission to establish a branch office shall state the proposed location thereof; the personnel and office facilities to be provided; and the estimated cost and projected profits of such office. Each application for a branch office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.

(b) All statements of fact tendered to the commissioner in connection with branch office application must be signed and sworn to.

(c) The commissioner may not approve an application for a branch office unless the commissioner shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing and department records that:

(1) The operation and condition of the applying savings bank affords no basis for supervisory objection.

(2) The character, responsibility and general fitness of the current management of the applicant are such as to warrant belief that the branch office will be operated in accordance with the Act.

(3) The financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the applying savings bank.

(d) The branch office facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the commissioner. No more than one 12-month extension will be approved by the commissioner, unless good

cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the authority for such office shall be forfeited.

(e) A branch office application is also required if a state savings bank would like to establish and operate a courier/messenger service pursuant to §75.32(5) of this title (relating to Types of Additional Offices).

§75.35 Mobile Facilities

(a) Each application for permission to establish a mobile facility shall state the proposed location(s) and times at which the facility will operate; the need therefor; the personnel and office facilities to be provided and the estimated expense of such facility. Each application for a mobile facility shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications and the hearing may be dispensed with under the same conditions. An application for permission to establish a mobile facility may not be approved unless the commissioner shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, and department records, all of the findings necessary for approval of a branch office.

(b) Mobile facilities must be operated consistent with the following requirements:

(1) Such facility shall be operated only at locations approved by the commissioner, each of which shall at all times be appropriately identified at the site and on the facility, within 100 miles of the institution's home office.

(2) Each applicant shall show that adequate safeguards exist for the security of such mobile facility and its content. The commissioner may require further safeguards, if in the commissioner's opinion the proposed

safeguards are inadequate.

§75.36 Designation as and Exemption for Supervisory Sale

(a) Designation as a supervisory sale. The commissioner may designate a purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase when:

(1) the commissioner has placed the selling institution under voluntary supervisory control or under conservatorship; or

(2) the commissioner has determined that the selling institution is in an unsafe condition; or

(3) the Federal Deposit Insurance Corporation has determined, and notified the commissioner, that one or more of the grounds specified in the Federal Deposit Insurance Act, for appointment of a conservator or receiver, exist with respect to the selling institution, or the proposed transaction is necessary to prevent the failure or possible failure of the selling institution. For purposes of this section, the term "unsafe condition" shall mean that the selling institution is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its capital; or that the institution and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the commissioner or any agreement between the institution and the commissioner; or that the institution, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the institution by the commissioner or other duly authorized

personnel of the department; or any other conditions affecting the institution which the commissioner and the board of directors of the institution agree place the institution in an unsafe condition.

(b) Exemption for a supervisory sale. Whenever the commissioner designates the purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase, the sections relating to the contents of applications for additional offices and the findings necessary for approval, §§75.31-75.41 of this title (relating to Additional Offices), shall not be applicable, and such purchase shall be effected in accordance with this section.

§75.38 Change of Home or Branch Office Location

(a) A savings bank may not move its home office or any branch office beyond its immediate vicinity without prior approval of the commissioner. Immediate vicinity is the area included within a radius or distance of one mile from the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the commissioner, if the office to be relocated has not been open for business at its present location for more than two years. If the existing office has been opened for more than two years, prior written notice shall be provided to the commissioner asserting the relocation is in the immediate vicinity.

(b) Notwithstanding subsection (a) of this section, a savings bank may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the commissioner with prior written notice. Upon such notification, the establishment of such office shall be deemed an approved administrative office of the bank.

(c) Each application for prior approval, or prior written notice, whichever is applicable, shall provide, the existing and new branch location's address; a description of the land and building to be built or leased and terms thereof; estimates of the cost of removal to and maintenance of the new location; whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office; evidence of the bank board's approval of the relocation; and any other information as deemed necessary by the commissioner.

(d) An application to move an office location shall be set for hearing by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.

(e) The commissioner may not approve an application to move or relocate any office of a savings bank, unless the commissioner finds from the data furnished with the application, the evidence adduced at the hearing, and department records, all of the findings necessary for approval of a branch office.

§75.41 Offices in Other States or Territories

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices and loan production offices in any state or territory of the United States. Each application for permission to establish such a branch office or loan production office shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. Each such application shall be set for hearing,

if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar applications for offices in this state. The commissioner may not approve such an application unless the commissioner finds from the data furnished with the application, the evidence adduced at the hearing, if applicable, and department records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

Subchapter D. Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition

§75.83 Notice and Hearing

Each application for reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition will be set for hearing, notice given, and hearing held in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.

§75.84 Publication

Publication of notice of application for reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition shall be subject to the same requirements as provided in this chapter for new charter applications.

§75.85 Time of Decision

The commissioner shall render a decision in the same manner and within the time as provided in this chapter for new charter applications.

§75.86 Appeal

Any appeal of an order or action of the commissioner shall be made pursuant Chapter 2001 of the Texas Government Code, and the Texas Savings Bank Act, §§91.004-91.006.

§75.87 Designation as and Exemption for Supervisory Merger

(a) The commissioner may designate a merger to be a supervisory merger when:

(1) the commissioner has placed one or more of the savings banks involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings Bank Act; or

(2) the commissioner has determined that one or more of the savings banks involved is in an unsafe condition; or

(3) the Federal Deposit Insurance Corporation has determined, and certified to the commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition shall mean that the savings bank (or savings banks) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the savings bank and the commissioner; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books,

papers, accounts, records, and affairs, of the savings bank by the commissioner or other duly authorized personnel of the department; or any other condition affecting the savings bank which the commissioner and the board of directors of the savings bank agree place the savings bank in an unsafe condition.

(c) When the commissioner designates a merger to be a supervisory merger, the provisions of this chapter relating to reorganization, merger, and/or consolidation, §§75.81-75.86 of this title (relating to Filing of Plan; Form and Content of Application; Notice and Hearing; Publication; Time of Decision; and Appeal) shall not be applicable, and the merger shall be effected pursuant to this section.

§75.88 Acquisitions Involving Financial Institutions in Other States or Territories

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state. Each such application shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the commissioner that all state regulatory requirements have been satisfied. Each such application shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time provided in this chapter for a similar application involving another savings bank in this state. The commissioner shall approve such an application if the commissioner finds from the data furnished with the application, the evidence adduced at the hearing, and department records, that all requirements of this chapter applicable to the proposed merger or acquisition have been met, and that all

applicable requirements of the laws of the state in question have been met.

§75.90 Conversion into a Savings Bank

(a) The commissioner may authorize any financial institution to convert itself into a savings bank in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) In order to obtain such authorization, the converting savings bank must by a two-thirds vote of the savings bank's board of directors approve the conversion plan and authorize the filing of a conversion application. Upon approval of the conversion plan, the plan shall be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings bank shall be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, shall be filed with the commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a domestic savings bank, the members or stockholders shall also vote on the directors of the savings bank. The proposed directors shall execute two copies of an application for certificate of incorporation as provided in the Texas Savings Bank Act, Chapter 92, Subchapter B. Each proposed director shall sign and acknowledge the application for certificate of incorporation as a subscriber to the savings bank and shall sign and acknowledge the proposed bylaws as an incorporator of the savings bank.

(c) The commissioner on receipt of the application and verified copy of the minutes shall conduct an examination of the financial institution seeking conversion. Following the examination, the commissioner shall approve the conversion without a hearing if the

commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of the Texas Savings Bank Act, Chapter 92, Subchapter B, or relevant rules adopted by the commissioner and the finance commission. On approval of the conversion, there shall be inserted a paragraph preceding the testimonium clause in the certificate of incorporation stating that the savings bank is incorporated by conversion from another financial institution.

(d) An applicant is entitled to a hearing under the Chapter 2001 of the Texas Government Code if the commissioner denies an application to convert and a written request for a hearing is delivered to the commissioner within 10 days after the date of denial. A hearings officer designated by the commissioner shall hold the hearing. Within 30 days after the date the hearing is completed, the commissioner shall enter a final order either approving or denying the application. An applicant has the right to appeal a final order to a district court of Travis County with the commissioner named as defendant. The commissioner is not required to file an appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

§75.91 Mutual to Stock Conversion

(a) Applications for conversion from a mutual to stock form of ownership shall be filed with the commissioner on forms approved by the commissioner. The application for mutual to stock conversion shall include:

- (1) a plan of conversion;
- (2) amendments to the savings bank's articles of incorporation and bylaws;
- (3) a copy of the proxy and soliciting

materials to be used; and

(4) such other information the commissioner may require.

(b) The plan of conversion shall provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings bank be offered to persons with subscription rights and management, in that order, and that any remaining shares shall be sold either in a public offering through an underwriter or directly by the converting savings bank in a direct community offering;

(3) that a direct community offering by the converting savings bank shall give a preference to natural persons residing in the counties in which the savings bank has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with paragraph (1) of this subsection, and shall specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings bank members approve the plan of conversion;

(6) that each savings accountholder of the converting savings bank shall receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings bank;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion shall be reasonable;

(9) that the converting savings bank shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings bank;

(10) that the proxies held with respect to voting rights in the savings bank will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder shall be the total of the deposit balances in the accountholder's savings accounts in the converting savings bank as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) shall not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion shall be adopted by not less than two-thirds of the savings bank's board of directors.

(d) Upon determining that an application for conversion is properly executed and is not materially incomplete, the commissioner will advise the savings bank, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the savings bank shall prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each community in which an office of the savings bank is located, as follows.

Attached Graphic

(e) Promptly after publication of the notice or notices prescribed in subsection (d) of this section, the savings bank shall file one copy of

the notice together with an affidavit of publication from each publisher with the commissioner.

(f) Following approval of the application for conversion by the commissioner, the plan of conversion shall be submitted to the members at an annual or special meeting and the plan shall be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members of the savings bank.

(g) No offer to sell securities of a savings bank pursuant to a plan of conversion may be made prior to commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(h) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed.

(i) The converting savings bank shall pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(j) For the purpose of this rule, the public offering and a direct community offering shall

be deemed to commence upon the declaration of effectiveness by the commissioner of the final offering circular.

(k) The commissioner may grant a written waiver from any requirement for this rule.

(l) For the purposes of this rule:

(1) the term "control" means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise;

(2) the term "person" includes an individual, a group acting in concert, a corporation, a partnership, a savings bank, a trust, any unincorporated organization, or a government or political subdivision thereof.

Subchapter E. Change of Control

§75.121 Definitions

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

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of such savings bank;

(B) a spouse of a director, officer, or controlling person of such savings bank;

(C) a member of the immediate family of a director, officer, or controlling person of

such savings bank who is a director or officer of any subsidiary of such savings bank or of any holding company affiliate of such savings bank;

(D) any corporation or organization (other than the savings bank or a corporation or organization through which the savings bank operates) of which a director, officer, or controlling person of such savings bank:

(i) is an officer;

(ii) is a general partner;

(iii) is a limited partner who, directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or

(iv) directly or indirectly, either alone or with their spouse and the members of their immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity.

(3) Commissioner--The Texas Savings and Mortgage Lending Commissioner.

(4) Control (including the terms controlling, controlled by, and under common control with)--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. Control shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of a savings bank. The commissioner may determine, based upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of a savings bank as to make it necessary or appropriate in the public interest and for the protection of the account holders of a savings bank that the person be deemed to control the savings bank. There shall be a presumption of control if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 10% or more of the voting securities of a savings bank. Such person may, by application to the commissioner, seek to rebut that control presumption.

(5) Issuer--The savings bank which has issued the security in question.

(6) Person--An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(7) Savings bank--Shall include all savings

banks organized or chartered under the laws of this state. For purposes of this chapter, savings bank shall include any other person controlling a savings bank.

(8) Voting security--Shall include any security convertible into or evidencing a right to acquire a voting security.

§75.122 Acquisition of a Savings Bank

The following procedures shall be followed when a person desires to acquire control of a savings bank.

(1) No person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings bank if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings bank, unless such person has filed with the commissioner all of the following information on an application form approved by the commissioner and which application form is deemed by the commissioner to be complete and has received a written order from the commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if said applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Said filing shall contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and, if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the

case; and any other relevant information requested by the commissioner;

(B) if applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof shall have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there shall be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings banks, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings bank's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms

of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings bank in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the commissioner.

(2) If the person required to file the information referred to in this section is a partnership, limited partnership, syndicate, trust, or other group, the commissioner may require that the information shall be given with respect to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information referred to in this section is a corporation, the commissioner may require that the information called for shall be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings bank may not be consummated until the commissioner

approves the application for acquisition of control. The commissioner shall render a decision within 60 days after the application required by paragraph (1) of this section has been filed with and deemed complete by the commissioner. The commissioner shall deny an application for acquisition of control of a savings bank if the commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank being acquired;

(C) plans or proposals to liquidate or sell the savings bank or its assets are not in the best interest of the savings bank;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings bank;

(E) the savings bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the

commissioner;

(G) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings bank or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or

(H) the applicant is not acting in good faith.

(5) If any material change occurs in the facts set forth in the application and any documents filed with the department, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.

§75.123 Hearings

(a) The commissioner may, by using personal discretion, set and hold a hearing on an application for acquisition of control of a savings bank if the commissioner deems it desirable to accumulate a complete record of pertinent information and data in support of approval or denial of the application. If the commissioner issues a written order denying an application for acquisition of control, the disapproved applicant is entitled to a public hearing on such application.

(b) Proceedings for a hearing on a disapproved application shall be instituted by the applicant's filing a written petition for hearing before the 31st day after the notice of intent to deny is mailed to the proposed transferee.

(c) The commissioner shall provide the applicant notice of not less than ten days specifying the time, date, and place of the

hearing.

(d) Opportunity shall be afforded the applicant to present evidence and argument on those issues involved.

(e) The record of the hearing shall consist of:

(1) all pleading, motions, and intermediate rulings;

(2) the application for acquisition of control and all accompanying documents;

(3) all evidence received and considered;

(4) a statement of those matters officially noticed;

(5) a written transcript of the proceedings, the cost of which shall be assessed to the applicant; and

(6) any other matters or documents required by statute or regulation.

(f) The final decision or order of the commissioner shall be rendered within 30 days after the date the hearing is finally closed. The commissioner may prescribe a longer period of time within which the final decision or order shall be issued, and such extension shall be announced at the conclusion of the hearing.

§75.124 Retention of Control

(a) The following conditions affecting any controlled savings bank, regardless of when or how such control has been acquired, are grounds for the commissioner to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these

regulations, abuse of the fiduciary responsibility held by a savings bank, or other demonstration of untrustworthiness by the savings bank, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings bank; or

(2) the violation of any antitrust law of this state by the savings bank, the holding company, or any affiliate.

(b) The commissioner may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank. If the commissioner finds that such unauthorized control exists, the commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons or unapproved or indirect control, or the commissioner may issue any other supervisory order the commissioner deems appropriate.

Chapter 76. Miscellaneous

Subchapter A. Books, Records, Accounting Practices, Financial Statements and Reserves

Subchapter B. Capital and Capital Obligations

§76.1 Location of Books and Records

Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office. A savings bank may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.

§76.3 Reproduction and Destruction of Records

Any savings bank may cause any or all records kept by such institution to be copied or reproduced by any photostatic, photographic, electronic, or microfilming process which correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material, and such savings bank may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

§76.4 Financial Statements; Annual Reports; Audits

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank, regardless of asset size, is required to submit an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 CFR, with the exception of any matters specifically addressed by this section, the Act, or its related rules.

§76.6 Charging Off or Setting Up Reserves against Bad Debts

The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles.

§76.12 Bylaws

(a) The bylaws of a state savings bank shall contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or articles of incorporation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the commissioner.

(b) A state savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state

law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the state savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the commissioner.

Subchapter B. Capital and Capital Obligations

§76.21 Capital Requirements

(a) Unless the context clearly indicates otherwise, when used in this chapter, “Capital” for a savings bank include (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under Generally Accepted Accounting Principles) plus any retained earnings and additional paid-in capital as well as such other items as the commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank shall maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

§76.22 Increase or Decrease of Minimum Capital Requirements

(a) The commissioner may increase or decrease the minimum capital requirement set forth in this chapter, upon written application by a savings bank or by supervisory directive if the commissioner shall have affirmatively found from the data available and/or the application and supplementary information submitted therewith that:

(1) the savings bank’s failure to meet the minimum capital requirement is not due to

unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the articles of incorporation or bylaws of the savings bank, or a violation of any law, rule, or supervisory order applicable to the savings bank or any condition that the commissioner has imposed on the savings bank by written order or agreement. For purposes of this chapter, unsafe and unsound practices shall mean, with respect to the operation of a savings bank, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the savings bank to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, highly speculative ventures, excessive concentrations of lending in any one area, and non-existent or poorly followed lending and underwriting policies, procedures, and guidelines;

(2) the savings bank is well managed. In determining whether the applying savings bank is well managed, the commissioner may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the

commissioner may deem necessary to properly evaluate the quality of the savings bank's management;

(3) the savings bank has submitted a plan acceptable to the commissioner for restoring capital within a reasonable period of time. Such plan shall describe the means and schedule by which capital will be increased. The plan shall also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title. The plan shall provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the commissioner to be reasonably feasible will not be acceptable. The commissioner may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the commissioner must file quarterly progress reports regarding compliance with its capital plan. The commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the commissioner may impose any condition, limitation, or restriction on such increase or decrease as the commissioner may deem necessary to ensure compliance with law and regulations and to prevent unsafe

and unsound practices.

(d) The commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the commissioner;

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its articles of incorporation or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the commissioner has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

Subchapter E. Hearings

§76.71 Hearings Officer

The Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, provides that the Finance Commission may employ a hearings officer, who for purposes of Government

Code, §2003.21, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. The Finance Commission hearings officer shall conduct hearings under provisions of the Act.

Subchapter F. Fees and Charges

§76.95 Fee for Special Examination or Audit

Each savings bank subject to a special examination shall pay to the department an examination fee based upon a daily rate of \$325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination shall include only those examinations which the commissioner conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the commissioner deems to be necessary. This special examination fee shall not be charged for an institution's annual regular examination.

§76.98 Annual Fee To Do Business

All savings banks chartered under the laws of the state and all foreign savings banks organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department such annual fee or assessment and examination fees as are set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the savings bank at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

§76.99 Fee for Reorganization, Merger, and Consolidation

(a) Any savings bank seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.88 of this title shall pay to the commissioner, at time of filing its plan, a fee of \$2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of \$2,000 shall be paid to the commissioner. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81 - 75.88 of this title.

(b) The fee set forth in subsection (a) of this section shall cover the cost of filing and processing with respect to the plan. In addition, such savings bank shall pay the cost of a formal record, if applicable, any cost incurred by the department in connection with the hearing, investigation, and travel expenses.

§76.108 Fees for Public Information Requests

(a) The fees for copies of records of the department which are subject to public examination pursuant to Chapter 552 of the Texas Government Code shall in accordance with Texas Government Code §552.262, be those adopted by rules of the attorney general.

(b) All requests will be treated equally. Charges may be waived at the commissioner's discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the department and will be at the

discretion of the commissioner.

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law.

(e) All public information requests will be referred to the commissioner's designee before the department will release the information.

Subchapter H. Consumer Complaint Procedures

§76.122 Consumer Complaint Procedures

(a) Definitions.

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 936-2003, or via electronic submission on the Department's

website at
http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

Chapter 77. Loans, Investments, Savings and Deposits

Subchapter A. Authorized Loans and Investments

§77.2 Limitations on Aggregate Loans to One Borrower

A savings bank may not make loans to any One Borrower to a greater extent than a savings association is permitted under the Home Owners' Loan Act, §5(u) (12 United States Code 1464(u)).

§77.4 Home Improvement Loans

(a) A savings bank may make or purchase participations in home improvement loans secured by a lien on a home, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this section.

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest, or may mature and be repayable consistent within §77.3 of this title (relating to Residential Real Estate Loans).

(c) Prior to funding a loan under this section, a savings bank shall comply with the requirements set forth in §77.31(a)(1), (3), (4), (6), (7), and (10) of this title (relating to Loan Documentation) and shall additionally have the following documents and records in its permanent loan file for such loan:

(1) a proposal signed by the borrower and, if applicable, the contractor reflecting the home improvements to be accomplished;

(2) the original of the signed instrument or instruments creating or constituting the lien securing the loan;

(3) evidence that the savings bank will have a valid lien on the security property

according to the terms of the loan documents;

(4) For all loans under this section, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.

(d) Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

(e) Upon completion of the improvements financed by the loan, a certificate of completion executed by the owner or contractor shall be made part of the permanent loan file.

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title of the Finance Code.

(g) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the savings bank relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the savings bank has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the security property. Any amount of the loan which represents interest shall not be disbursed until earned.

§77.5 Manufactured Home Loans

(a) A savings bank may make or purchase participations in loans secured by perfected first lien security interests in manufactured homes, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this

section.

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest.

(c) No loan made under this section shall include amounts to pay interest on the loan.

(d) Prior to funding a loan under this section, a savings bank shall comply with the requirements set forth in §77.31(a)(1), (3), (4), (5), (6), and (7) of this title (relating to Loan Documentation) and shall additionally have the following documents and records in its permanent loan file for such loan:

(1) a purchase money contract signed by the buyer and seller;

(2) the application for or original document of title issued pursuant to the Texas Manufactured Housing Standards Act, or any amendments thereto, showing the savings bank as first lienholder;

(3) evidence that the manufactured home is insured against loss by fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state where the security is located and naming the savings bank as a co-insured, as its interest may appear; and

(4) if security for the loan is real estate, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.

§77.8 Personal Property Loans

(a) A savings bank may make loans or purchase participations in loans secured by perfected first lien security interests in personal property as provided in the Texas Business and Commerce Code, on the terms

and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Loans made under this section may include add-on interest as authorized by the Texas Credit Title of the Finance Code.

(c) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the savings bank relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the savings bank has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the security property. Any amount of the loan which represents interest shall not be disbursed until earned.

(d) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a)(1)-(8), (12), and (13) of this title (relating to Loan Documentation). If other property (for example, residential or commercial real estate) is provided as additional security for the loan, the loan is not required to meet the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

§77.31 Loan Policies and Documentation

(a) Each savings bank shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings bank's capital. Credit underwriting standards should consider

the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the savings bank and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the savings bank to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings bank may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board of directors' resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract,

disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed applicable limitations on loans to One Borrower are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes

containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings bank);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings bank as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings bank arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title of the Finance Code.

(b) Documentation guidelines for unsecured

loans under this chapter would generally include the documents in subsection (a)(1) and (3) - (7) of this section.

(c) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(d) A savings bank may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents shall be forwarded to the savings bank within five business days after closing, or immediately after recording, for those documents which require filing of record.

(e) Permanent Loan File Requirements.

(1) Loan documentation shall be in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the savings bank.

(2) The permanent loan file required by this section shall be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

(3) The permanent loan file shall contain evidence that the savings bank obtained the prompt recording in the proper records of every mortgage, deed of trust, or other

instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement shall not apply to loan participations purchased by the savings bank.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(5) When a savings bank purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The savings bank shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(f) The records of the savings bank shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies shall be approved in the same manner as loans originating in the principal office.

(g) A savings bank shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan

commitment.

§77.33 Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees shall be limited and governed by the provisions of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. Such provisions shall be enforced by the department.

§77.35 Definitions

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

(1) Affiliated person--A director, officer, or controlling person of a savings bank; a spouse of a director, officer, or controlling person of such savings bank; a member of the immediate family of a director, officer, or controlling person of such savings bank; any corporation or organization (other than the savings bank or a subsidiary of the savings bank) of which a director, officer, or controlling person of such savings bank is chief executive officer, chief financial officer, or a person performing similar functions, is a general partner, is a limited partner who directly or indirectly, either alone or with their spouse and the members of their immediate family, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members, owns an interest of 25% or more in the partnership; or directly or indirectly either alone or with their spouse and the members of their immediate family, owns or controls 10% or more of any class of equity securities or

owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members, 25% or more of any class of equity securities; any trust or other estate in which a director, officer, or controlling person of such savings bank or a member of their immediate family has a substantial beneficial interest or as to which such person or their spouse serves as trustee or in a similar fiduciary capacity; a holding company affiliate; and any officer, director, or controlling person of a holding company affiliate.

(2) Commercial real estate--Land on which structures or improvements which do not qualify the property as residential real estate are located.

(3) Controlling person--Any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing 25% or more of the voting shares or rights of a savings bank; or controls in any manner the election or appointment of a majority of the directors of a savings bank. A director of an insured institution will not be deemed to be a controlling person of such institution based upon their voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors of a savings bank, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

(4) Holding company affiliate--A corporation of which a savings bank is a subsidiary and any other subsidiary of such

corporation other than a subsidiary of the savings bank.

(5) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(6) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(7) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(8) Interim construction loans--Loans made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans allowed under §77.4 of this title (relating to Home Improvement Loans).

(9) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is eight body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(10) Officer--The president, any vice president (but not an assistant vice president, second vice president, or other vice president having authority similar to an assistant or

second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization, whether incorporated or unincorporated. The term "officer" shall also mean the chairman of the board of directors if the savings bank's articles of incorporation or bylaws authorize the chairman to participate in the operating management of the institution or if the chairman in fact participates in such management.

(11) One Borrower--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10% or more (based on the value of their contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor shall not be deemed an obligor.

(12) Personal property--Tangible and intangible property which is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel

paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(13) Recourse--For the purposes of this chapter, recourse shall mean a contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(14) Residential real estate--Land on which a house, a home, or an apartment house is located including combinations of farm residences and commercial farm real estate.

(15) Subsidiary--A subsidiary of a savings bank shall have the meaning prescribed in §77.91 of this title (relating to Subsidiary Corporations).

(16) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate shall be considered residential real estate or commercial real estate.

§77.51 Letters of Credit

A savings bank may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements.

(1) The savings bank shall maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit shall conspicuously state that it is a letter of credit or shall be conspicuously entitled as such.

(3) The savings bank's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings bank's obligation to pay

shall arise only upon presentation of a draft and other documents as specified in the letter of credit and there shall be no obligation on the part of the savings bank to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings bank shall obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) The amount of each letter of credit shall be included in the aggregation of loans subject to the limitations of this chapter relating to the loans to One Borrower computing loan limitations to one borrower.

(7) Each letter of credit's terms shall be limited and its documentation shall be accomplished as though it were a loan under this chapter.

(8) An appropriate fee may be collected for each letter of credit issued.

§77.71 Investment in Securities

(a) A savings bank shall have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the Federal Deposit Insurance Corporation (FDIC); in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings

bank's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the commissioner.

(b) A savings bank investing in securities under this section shall insure that the securities are delivered to the savings bank, or for the savings bank's account to a custodial agent or trustee designated by the savings bank, within three business days after paying for or becoming obligated to pay for the securities. The savings bank may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the Federal Deposit Insurance Corporation, any savings and loan association legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings bank shall insure that it receives a custodial or trust receipt for the securities within three business days of the delivery of the securities.

(c) No savings bank or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the commissioner.

(d) No savings bank or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings bank.

(e) Investments in equity securities.

(1) A savings bank or any service corporation, operating subsidiary, or finance subsidiary of a savings bank may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings bank may invest in stock or equity securities unless the securities are eligible investments for federal savings banks.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

(f) A savings bank may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

**§77.91 Investment in and Divestiture of
Subsidiary Corporations**

(a) As used in this chapter, corporation shall mean any subsidiary whether owned directly or indirectly, wholly or partially. Subsidiary shall mean any company which is controlled by the savings bank or by a company which is controlled, directly or indirectly, by the savings bank. For purposes of this section a savings bank shall be deemed to have control of a company if the savings bank directly or indirectly, or acting in concert with one or more other persons or entities, or through one or more subsidiaries, owns, controls, or holds with the power to vote, or holds proxies

representing, more than 25% of the voting shares of such company, or controls in any manner the election of a majority of the directors of such company, is a general partner in or has contributed more than 25% of the capital of such company.

(b) A savings bank may, only after prior written approval of the commissioner, invest in a corporation in accordance with the terms and conditions set forth in this chapter. The commissioner may approve an investment in a corporation if the commissioner finds that:

(1) the operation and condition of the savings bank affords no basis for supervisory objection;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the corporation will be clearly distinguishable from those of the parent savings bank; and

(4) the corporation is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings bank.

(c) If the commissioner finds that a savings bank has abused or is abusing the authority granted in this chapter, the commissioner may exercise discretion in denying such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

(d) Subsequent to obtaining approval for its initial investment and activity, a corporation may not engage in additional or substitute activities without the prior written approval of the commissioner.

(e) A savings bank may, with prior written approval of the commissioner, divest itself of a subsidiary corporation or merge or consolidate the subsidiary corporation with

another company if the commissioner finds that the terms and conditions of the transaction are in the best interests of the savings bank.

§77.94 Subsidiary Operations

(a) The savings bank shall obtain prior written approval of the commissioner for the establishment and location of the main office, and any branch office, agency office, or any other office or facility of the corporation, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments shall be furnished to the savings bank within 30 days from date of execution.

(c) The corporation agrees to furnish, at the expense of the corporation or savings bank, an independent appraiser's report or other expert opinion as determined to be necessary by the commissioner for the purpose of establishing the value of any investments made by the corporation.

(d) Each corporation shall maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the corporation from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings bank or its holding company may satisfy this requirement obtain an extension rider to the surety bond coverage of the parent savings bank.

(e) All directors of the savings bank and corporation shall furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

Subchapter B. Savings and Deposits

§77.116 Pledging of Assets to Secure Deposits of Certain Public Purpose Entities

A savings bank may pledge its assets to secure the deposits of:

- (1) the United States government or any instrumentality thereof;
- (2) any State or political subdivision, agency, or instrumentally thereof;
- (3) any local municipality, agency, or instrumentally thereof;
- (4) any federally-recognized Indian tribe; or
- (5) any other entity, as required by state or federal law, or court order.

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending

7. Discussion and Possible Vote to Take Action on the Completed Rule Review of 7 Texas Administrative Code (TAC), Chapter 79, Concerning Residential Mortgage Loan Servicers.

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC 79, was published in the *Texas Register* as required on October 23, 2015, (40 TexReg 7446). The Department received no comments regarding the review.

RECOMMENDED ACTION: The Department recommends the Finance Commission find that the reasons for initially adopting the rules in Chapter 79 continue to exist, and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapter 79 continues to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 79 (§79.1 - §79.50) relating to Residential Mortgage Loan Servicers.

Notice of the review of Chapter 79 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continues to exist and readopts Chapter 79 in accordance with the requirements of the Texas Government Code.

8. Discussion and Possible Vote to Take Action on the Completed Rule Review of 7 Texas Administrative Code (TAC), Chapter 80, Concerning Texas Residential Mortgage Loan Companies.

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC 80, was published in the *Texas Register* as required on October 23, 2015, (40 TexReg 7446). The Department received no comments regarding the review.

RECOMMENDED ACTION: The Department recommends the Finance Commission find that the reasons for initially adopting the rules in Chapter 80 continue to exist, and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapter 80 continues to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 80 (§80.1 - §80.302) relating to Texas Residential Mortgage Loan Companies.

Notice of the review of Chapter 80 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continues to exist and readopts Chapter 80 in accordance with the requirements of the Texas Government Code.

9. Discussion and Possible Vote to Take Action on the Completed Rule Review of 7 Texas Administrative Code (TAC), Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators.

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC 81, was published in the *Texas Register* as required on October 23, 2015, (40 TexReg 7446). The Department received no comments regarding the review.

RECOMMENDED ACTION: The Department recommends the Finance Commission find that the reasons for initially adopting the rules in Chapter 81 continue to exist, and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapter 81 continues to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 81 (§81.1 - §81.302) relating to Mortgage Bankers and Residential Mortgage Loan Originators.

Notice of the review of Chapter 81 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continues to exist and readopts Chapter 81 in accordance with the requirements of the Texas Government Code.

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 Texas Administrative Code (TAC), §79.1, Concerning Definitions, and §79.2, Concerning Required Disclosure.

PURPOSE: The purpose of the proposed amendments is to implement changes resulting from the Commission's review of Chapter 79 under Texas Government Code, §2001.039. Amendments to Chapter 79, Subchapter A, §79.1 are proposed to add clarifying definitions. Amendments to Chapter 79, Subchapter A, §79.2 are proposed to clarify that servicers are only required to give the statutory disclosure notice on real estate located in Texas.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 79, §79.1 and §79.2 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC Chapters 79, §79.1 and §79.2 in the *Texas Register* for comment.

Title 7. Banking and Securities
Part 4. Texas Department of Savings and Mortgage Lending
Chapter 79. Residential Mortgage Loan Servicers
Subchapter A. Registration

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the Department), proposes to amend 7 Texas Administrative Code, Chapter 79, Subchapter A concerning Registration §§79.1-79.2.

In general, the purpose of the proposal regarding these rules is to implement changes resulting from the commission's review of Chapter 79, under Texas Government Code §2001.039.

Section 79.1 addresses definitions. The proposed amendments reorganize the terms and define the Act.

Section 79.2 addresses required disclosures. The proposed amendments clarify that the required disclosure is only necessary for the servicing of residential mortgage loans on real estate located in Texas. It further requires the posting of the disclosure on the registrant's website.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no

adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §158.003, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Servicers.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 158.

<rule>

§79.1 Definitions

As used in this chapter, the following terms have the meanings indicated:

~~(a) "Department" means the Department of Savings and Mortgage Lending.~~

~~(b) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).~~

(1) ~~(e)~~ "Commissioner" means the Savings and Mortgage Lending Commissioner.

(2) ~~(d)~~ "Commissioner's designee" means an employee of the Department performing his or

her assigned duties such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).

(5) ~~(e)~~ "Person" means an individual, corporation, company, limited liability company, partnership or association.

(6) The "Act" means the Residential Mortgage Loan Servicer Registration Act, as provided by Finance Code, Chapter 158.

§79.2 Required Disclosure

(a) For the servicing of residential mortgage loans on real estate located in Texas, pursuant to Texas Finance Code §158.101 a A registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan.

(b) In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants servicing residential mortgage loans on real estate located in Texas, must include the disclosure contained in the following figure in all correspondence provided to the borrowers. This written notice shall not be provided regarding the servicing of residential mortgage loans on real estate which is not located in Texas. Registrants servicing residential mortgage loans on real estate located in Texas shall also post the disclosure in the following figure on their website, with a statement to reflect that such disclosure notice only applies

to the residential mortgage loans on real estate located in Texas:

Attached Graphic

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 Texas Administrative Code (TAC), Chapter 80, §80.2, Concerning Definitions, §80.204, Concerning Books and Records, and §80.205, Concerning Mortgage Call Reports.

PURPOSE: Amendments to Chapter 80, Subchapter A General Provisions, §80.2, concerning Definitions are proposed to add clarifying definitions. Amendments to Chapter 80, Subchapter C Duties and Responsibilities, §80.204 concerning Books and Records is proposed to add clarifying language. Amendments to Chapter 80, Subchapter C Duties and Responsibilities, §80.205 concerning Mortgage Call Reports are proposed to clarify that administrative action includes the assessment of an administrative penalty.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 80, §80.2, §80.204 and §80.205 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC Chapters 80, §80.2, §80.204 and §80.205 in the *Texas Register* for comment.

Title 7. Banking and Securities
Part 4. Texas Department of Savings and Mortgage Lending
Chapter 80. Texas Residential Mortgage Loan Companies
Subchapter A. General Provisions
Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend 7 Texas Administrative Code Chapter 80: Subchapter A, §80.2 concerning definitions; Subchapter C §80.204 concerning books and records and §80.205 concerning mortgage call reports.

In general, the purpose of the proposal regarding these rules is to implement changes resulting from the commission's review of Chapter 80, under Texas Government Code §2001.039.

Section 80.2 addresses definitions. The proposed amendments reorganize terms, and introduces terms to create parity with 7 Texas Administrative Code Chapter 79 (regarding Residential Mortgage Loan Servicers) and Chapter 81 (regarding Mortgage Bankers and Residential Mortgage Loan Originators).

Section 80.204 concerning books and records. The proposed amendment adds clarifying language.

Section 80.205 addresses mortgage call reports. The proposed amendment clarifies that "administrative action" includes the assessment of an administrative penalty.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §11.306, which provides that the Finance Commission may adopt residential mortgage loan origination rules as provided by Chapter 156 and by Texas Finance Code §156.102, which provides that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 156.

<rule>

§80.2 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) (No change.)

(2) “Commissioner” means the Savings and Mortgage Lending Commissioner.

(3) ~~(2)~~ “Commissioner's designee” means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized “personnel or representative” as such term is used in Finance Code, Chapter 156.

(4) ~~(3)~~ “Company” means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.

(5) ~~(4)~~ “Control Person” means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) - (D) (No change.)

(6) “Criminal Offense” means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the

like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(7) “Department” means the Department of Savings and Mortgage Lending.

(8) “Nationwide Mortgage Licensing System and Registry” has the meaning assigned by Finance Code §180.002(12).

(9) ~~(5)~~ “One-to-four family residential real property” means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

(10) ~~(6)~~ “Physical Office” means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation

will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(11) ~~(7)~~ "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

(12) ~~(8)~~ "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§80.204 Books and Records

(a) In order to assure that each licensee will have all records necessary to enable the

Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) (No change.)

(1) - (3) (No change.)

§80.205 Mortgage Call Reports

(a) - (c) (No change.)

(d) Failure to file a mortgage call report or a statement of condition report may result in administrative action, which includes the assessment of an administrative penalty.

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending

12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 Texas Administrative Code (TAC), Chapter 81, §81.2, Concerning Definitions, §81.204, Concerning Books and Records, and §81.205, Concerning Mortgage Call Reports.

PURPOSE: Amendments to Chapter 81, §81.2 are proposed to add clarifying definitions. The amendment to Chapter 81, §81.204 is proposed to add clarifying language. The amendments to Chapter 81, §81.205 are proposed to clarify that administrative action includes the assessment of an administrative penalty.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments in 7 TAC, Chapter 81, §81.2, §81.204 and §81.205 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC Chapters 81, §81.2, §81.204 and §81.205 in the *Texas Register* for comment.

Title 7. Banking and Securities

Part 4. Texas Department of Savings and Mortgage Lending

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators

Subchapter A. General Provisions

Subchapter C. Duties and Responsibilities

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend 7 Texas Administrative Code, Chapter 81: Subchapter A, concerning general provisions §81.2 concerning definitions and Subchapter C, concerning duties and responsibilities §81.204 concerning books and records and §81.205 concerning mortgage call reports.

In general, the purpose of the proposal regarding these rule(s) is to implement changes resulting from the commission's review of Chapter 81, under Texas Government Code §2001.039.

Section 81.2 addresses definitions. The proposed amendments reorganize terms and adds two definitions to be consistent with 7 Texas Administrative Code Chapters 79 (concerning Residential Mortgage Loan Servicers) and 80 (concerning Texas Residential Mortgage Loan Companies) to enhance clarity.

Section 81.204 addresses books and records. The proposed amendment adds clarifying language.

Section 81.205 addresses mortgage call reports. The proposed amendment clarifies that administrative action includes the assessment of an administrative penalty.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a

result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §157.023, which provide that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 157.

<rule>

§81.2 Definitions

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(2) ~~(4)~~ "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(3) ~~(2)~~ "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) - (H) (No change.)

(4) ~~(3)~~ "Department" means the ~~Texas~~ Department of Savings and Mortgage Lending.

(5) ~~(4)~~ "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

(6) ~~(5)~~ "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of an originator need not

be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(7) ~~(6)~~ "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

(8) "Residential mortgage loan originator" has the meaning assigned in Texas Finance Code, §180.002.

§81.204 Books and Records

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) – (f) (No change.)

(3) (No change.)

§81.205 Mortgage Call Reports

(a) - (c) (No change.)

(d) Failure to file a mortgage call report or statement of condition report may result in administrative action, which includes the assessment of an administrative penalty.

Certification

The agency hereby certifies that the amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending