

**A.**

**Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....February 19, 2016

**MEETING LOCATION** .....State 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 DATES** .....April 15, 2016  
June 10, 2016  
August 19, 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, February 19, 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 A1, B2-B3, and D3-D4*

*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. ***Review and Approval of the Minutes of the December 18, 2015, Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
  - A. Discussion of 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
  - 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 Lending
    3. Office of Consumer Credit Commissioner
  - C. Presentation from the Texas Treasury Safekeeping Trust Company
  - D. Report on Activities Relating to the Texas Financial Education Endowment Fund
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

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
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 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. 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 §5.101, Concerning Employee Training and Education Assistance Programs*
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*
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
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
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
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
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
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

10. 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.*

### **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
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
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 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
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

### **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
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
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***
4. ***Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales***
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
6. 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*

**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.

**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, December 18, 2015  
8:00 a.m.**

The Finance Commission of Texas convened at 8:00 a.m. on December 18, 2015, with the following members present: Bill White, Chairman, Paul Plunket, Vice Chair, Susan Burton, Stacy London, Larry Patton, Lori McCool, Jay Shands, Will Lucas, Jonathan Newton, and Cindy Lyons. Members absent: Victor Leal

Chairman White announced there was a quorum of the Finance Commission of Texas with ten members present (00:20 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. FINANCE COMMISSION MATTERS</b>		
1. Review and Approval of the Minutes of the October 16, 2015 Finance Commission Meeting	<b>On Consent Agenda – Item A1</b> This item approved on the Consent Agenda.	00:55 start of discussion
2. General Public Comment	No Action Required.	01:18 start of discussion
3. Consent Agenda - <b>Items A1, B1-B5, B9-B10</b>	Larry Patton made a motion to approve the Consent Agenda. Stacy London seconded and the motion passed.	01:28 start of discussion 01:34 vote
<b>B. AGENCY RULES</b>		
FINANCE COMMISSION		
1. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings	<b>On Consent Agenda – Item B1</b> This item approved on the Consent Agenda.	n/a
DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
2. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 Concerning Savings and Loan Associations	<b>On Consent Agenda – Item B2</b> This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapters 75-77 Concerning Savings Banks	<b>On Consent Agenda – Item B3</b> This item approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>OFFICE OF CONSUMER CREDIT COMMISSIONER</p> <p>4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1 Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure</p>	<p><b>On Consent Agenda – Item B4</b> This item approved on the Consent Agenda.</p>	<p>n/a</p>
<p>5. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC Chapter 85, Subchapter B, Regarding Crafted Precious Metal Dealers</p>	<p><b>On Consent Agenda – Item B5</b> This item approved on the Consent Agenda.</p>	<p>n/a</p>
<p>6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, and 83.4002; the Adoption of New §83.4003 (repeal and replace), §83.5003 and §83.5004; and on the Adoption of the Repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004 in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review</p>	<p>Larry Patton made a motion to approve the Adoption of Amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, and 83.4002; the Adoption of New §83.4003 (repeal and replace), §83.5003 and §83.5004; and on the Adoption of the Repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004 in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review. Cindy Lyons seconded and the motion passed.</p>	<p>02:53 start of discussion 05:40 vote</p>
<p>7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New §83.3003 (repeal and replace); the Proposal and Publication for Comment on Amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and on the Proposal and Publication for Comment on 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</p>	<p>Lori McCool made a motion to approve the Proposal and Publication for Comment on New §83.3003 (repeal and replace); the Proposal and Publication for Comment on Amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and on the Proposal and Publication for Comment on 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.</p>	<p>07:05 start of discussion 11:40 vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
	Susan Burton seconded and the motion passed.	
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review	Stacy London made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review. Lori McCool seconded and the motion passed.	13:04 start of discussion 14:12 vote
TEXAS DEPARTMENT OF BANKING 9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies	<b>On Consent Agenda – Item B9</b> This item approved on the Consent Agenda.	n/a
10. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §17.23 Concerning Trust Company Call Reports	<b>On Consent Agenda – Item B10</b> This item approved on the Consent Agenda.	n/a
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §5.101, Concerning Employee Training and Education Assistance Programs	Susan Burton made a motion to approve the Proposal and Publication for Comment of Amendment to 7 TAC §5.101, Concerning Employee Training and Education Assistance Programs. Jay Shands seconded and the motion passed.	15:01 start of discussion 15:55 vote
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, 33.13 Concerning Processing Times for Certain Money Service Business Applications	Will Lucas made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC, 33.13 Concerning Processing Times for Certain Money Service Business Applications. Paul Plunkett seconded and the motion passed.	17:00 start of discussion 18:32 vote
<b>A. FINANCE COMMISSION MATTERS (CONT'D)</b>		
4. Finance Commission Operations		19:12 start of

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
		discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Fiscal Year 2016 Internal Auditor’s Risk Assessment And Audit Plan for the Finance Commission Agencies with the change made to the audit area of Department of Savings and Mortgage Lending	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	20:30 start of discussion 21:45 vote
B. Discussion of and Possible Vote to Award Final Selection of Organizations, to Receive Grant Funds in an Aggregate Amount Not to exceed \$250,000 From the Texas Financial Education Endowment Fund	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	22:02 start of discussion 22:53 vote
6. Discussion of the Process for the 2017 – 2021 Strategic Plans for the Finance Commission Agencies	No Action Required	24:00 start of discussion
7. Discussion of and Possible Vote to Take Action on the Revisions of the Finance Commission’s Policies and Procedures	Jonathan Newton made a motion to approve the Revisions of the Finance Commission’s Policies and Procedures. Larry Patton seconded and the motion passed.	25:00 start of discussion 27:12 vote
8. 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	Lori McCool made a motion to approve the following Commissioner pay adjustments: <ul style="list-style-type: none"> <li>• Base salaries for three Agency Commissioners to reflect 2.5% pay increase appropriated by HB1 &amp; HB9 for state employees participating in ERS, to be retroactive to Sept.1, 2015.</li> <li>• \$1250 parity adjustment</li> </ul>	1:22:53 start of discussion 1:23:58 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
	<p>to Office of Consumer</p> <p>Credit Commissioner base salary</p> <ul style="list-style-type: none"> <li>• 4% one-time merit payment for three Agency Commissioners to address lack of adjustments since 2013.</li> </ul> <p>Susan Burton seconded and the motion passed.</p>	
<p>9. 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>	<p>Deferred to Executive Session, no vote taken.</p>	<p>n/a</p>
<p>10. 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</p>	<p>Deferred to Executive Session, no vote taken.</p>	<p>n/a</p>
<b>C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING</b>		
<p>1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items</p>	<p>No Action Required</p>	<p>27:45 start of discussion</p>
<p>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</p>	<p>No Action Required</p>	<p>35:30 start of discussion</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting ; b) Staffing; c) Other Items; and d) Legislative Activity	No Action Required	42:02 start of discussion
<b>D. OFFICE OF CONSUMER CREDIT COMMISSIONER</b>		
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	43:15 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required.	n/a
<b>E. TEXAS DEPARTMENT OF BANKING</b>		
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	No Action Required	58:03 start of discussion
2. Discussion of and Possible Vote to Take Action on the Appointment of Rebecca Ann Motley to Serve as the Consumer Representative of the Guaranty Fund Advisory Council for the period January 1, 2016 – December 31, 2017	Stacy London made a motion to approve the Appointment of Rebecca Ann Motley to Serve as the Consumer Representative of the Guaranty Fund Advisory Council for the period January 1, 2016 – December 31, 2017. Jonathan Newton seconded and the motion passed.	1:12:54 start of discussion 1:14:07 vote
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required	n/a

Chairman Bill White called for an Executive Session at 9:33 a.m. *(1:22:05 on the audio file)*. The open meeting resumed at 10:34 a.m. *(1:22:15 on the audio file)*.

There being no further business, Chairman Bill White adjourned the meeting of the Finance Commission at 10:36 a.m. *(1:26:15 on the audio file)*.

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William J. White, Chairman  
Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Anne Benites, Executive Assistant  
Finance Commission of Texas

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## Future Meetings Rule Schedule

<b>Rules</b>	<b>Short Title/Purpose</b>	<b>Projected Proposal Date for Presentation to Finance Commission</b>	<b>Agency</b>
7 TAC, Chapter 24	<b>Timeline for Processing Appeals for Cemetery Brokers</b>	4/15/16	DOB
7 TAC, Chapter 31	<b>Timeline for Processing Appeals for Private Child Support Enforcement Agencies</b>	4/15/16	DOB
7 TAC, Chapter 35	<b>Timeline for Processing Appeals for Check Verification Entities</b>	4/15/16	DOB
7 TAC, Chapter 79	<b>Residential Mortgage Loan Servicers <i>Rule Review</i></b>	4/15/16	SML
7 TAC, Chapter 80	<b>Texas Residential Mortgage Loan Companies <i>Rule Review</i></b>	4/15/16	SML
7 TAC, Chapter 81	<b>Mortgage Bankers and Residential Mortgage Loan Originators <i>Rule Review</i></b>	4/15/16	SML
7 TAC, §1.201	<b>Interpretations and Advisory Letters <i>Rule Review</i></b>	6/10/16	OCCC
7 TAC, Chapter 82	<b>Administration <i>Rule Review</i></b>	6/10/16	OCCC

7 TAC, Chapter 87	<b>Tax Refund Anticipation Loans</b> <i>Rule Review</i>	6/10/16	OCCC
7 TAC, Chapters 151, 152, and 153	<b>Home Equity Lending Procedures; Repair, Renovation, and New Construction on Homestead Property; Home Equity Lending</b> <i>Rule Review</i>	6/10/16	Joint Fin. Regulatory Agencies

Finance Commission of Texas

**Consent Agenda**

February 19, 2015

**A. Finance Commission Matters**

1. Review and Approval of the Minutes of the December 18, 2015, Finance Commission Meeting

**B. Texas Department of Banking**

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
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

**D. Office of Consumer Credit Commissioner**

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
4. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales

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**Texas Department of Banking**

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Charles G. Cooper  
Commissioner

**TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705  
512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members  
From: Kurt Purdom, Director of Bank & Trust Supervision  
Date: February 5, 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	5/31/2016	8/31/2016
<b>Industry Profile (# / Assets in billions)</b>												
# Banks	273	\$225.2	256	\$240.7	253	\$242.3						
# Trust Co. (1)	21	\$40.5	20	\$97.1	21	\$95.5						
# FBA/FBB	10	\$93.6	9	\$89.2	9	\$81.5						
<b>Examinations Performed</b>												
Banks	125		118		33							
Trust Co.	32		28		6							
FBA/FBB	2		2		0							
<b>Bank Uniform Financial Institution Composite Ratings</b>												
1	128	46.9%	127	49.6%	126	49.8%						
2	132	48.3%	122	47.7%	120	47.4%						
3, 4, & 5	13	4.8%	7	2.7%	7	2.8%						
Non-Rated	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. In the last economic recession, problem banks peaked in June of 2010 at 58. However, as illustrated in the table above, problem bank numbers have steadily decreased, and as of February 5, 2016, problem banks totaled 8. Aided by improved economic conditions, problem bank numbers have returned to pre-recession levels, which we consider to be a range between 3% and 5% of the total number of institutions. Entities with significant oil and gas exposure are being closely monitored as a protracted period of low oil prices could result in additional asset quality problems for some institutions and lead to an increase in the number of problem banks.

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
<b>Banks - Safety and Soundness</b>						
Formal	5	2	2			
Informal	21	14	14			
<b>Banks - Bank Secrecy Act (BSA)</b>						
Formal	0	1	0			
Informal	1	0	1			
<b>Banks - Information Technology (IT)</b>						
Formal	0	0	0			
Informal	4	2	2			
<b>Trust Departments of Banks and Trust Companies</b>						
Formal	0	0	0			
Informal	1	2	3			
<b>Total Administrative/Enforcement Actions</b>						
Formal	5	3	2			
Informal	27	18	20			
<b>Total</b>	<b>32</b>	<b>21</b>	<b>22</b>			

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)
<b>Commercial Banks</b> <i>(All / DOB Only)</i>	94% / 93%	98% / 98%
<b>IT</b>	95% / 95%	99% / 100%
<b>Trust</b>	97% / 100%	95% / 100%
<b>Foreign Banks (FRB)</b>	100%	100%
<b>Trust Companies (DOB)</b>	97%	82%
<b>IT</b>	100%	86%

**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 of Dallas counterparts to perform follow-up reviews at banks with potentially higher risk profiles. To date, no significant supervisory concerns have been identified.
- Special Operations and Conferences:
  - Commissioner Cooper, Director Purdom, Regional Director Anderson and Review Examiners Miller and Susany participated in the CSBS Supervisors Symposium held in Phoenix, Arizona the week of 12-7-15.
  - Department supervisors participated in applicant interview training in Austin on 12-14-15.
  - Senior staff members participated in a continuity of operations tabletop exercise held at the Austin Headquarters Office on 1-27-16.
  - Director of IT Security Operations Hinkle gave the Austin Headquarters staff a briefing on the FFIEC Cybersecurity Assessment Tool on 1-28-16.
  - Commissioner Cooper participated in the Independent Bankers Association of Texas (IBAT) Winter Summit in Beaver Creek, Colorado the week of 1-25-16.
  - Commissioner Cooper and other staff members participated in IBAT Regional Meetings held in ten different cities the week of 2-1-16.
- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

Federal Programs	Troubled Asset Relief Program <i>(TARP)</i> <sup>(2)</sup>	Small Business Lending Fund <i>(SBLF)</i> as of 12/31/2015
<b>Number of Applicants</b>	80	23
<b>Number of Banks that Received Funds</b>	21	12
<b>Total Amount Distributed</b> <i>(\$ in millions)</i>	\$2,837.7	\$255.7
<b>Number of Banks with Outstanding Funds</b>	0	8
<b>Total Amount Outstanding</b> <i>(\$ in millions)</i>	\$0	\$107.7

(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.



Charles G. Cooper  
Commissioner

**TEXAS DEPARTMENT OF BANKING**

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To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities DBF

Date: February 4, 2016

Subject: Summary of the Corporate Division Activities

Corporate Activities		Applications and Notices Processed						
Entities	FY2013	FY2014	FY2015	1Q15	2Q15	3Q15	4Q15	1Q16
<b>*Banks and Bank-related</b> (holding companies, etc.)	197	271	236	45	57	73	61	57
Foreign Banks	1	0	6	0	1	2	2	1
Trust Companies	11	13	8	3	2	2	1	3
MSBs	21	23	32	7	4	7	13	6
PCSEAs	3	11	3	0	1	1	1	2
CVEs	4	3	3	0	3	0	0	0
Cemetery Brokers	-	4	4	0	2	0	2	1
Other (Use of Name)	67	41	50	10	12	11	16	14
<b>Totals</b>	<b>304</b>	<b>366</b>	<b>342</b>	<b>65</b>	<b>82</b>	<b>96</b>	<b>96</b>	<b>84</b>
Background Checks Completed								
Entities	FY2013	FY2014	FY2015	1Q15	2Q15	3Q15	4Q15	1Q16
<b>#Banks and Bank-related</b> (holding companies, etc.)	71	111	24	4	16	1	3	2
Foreign Banks	0	0	0	0	0	0	0	0
Trust Companies	8	10	0	8	0	0	0	2
MSBs	130	108	137	43	29	33	18	52
Other	1	0	0	0	0	0	0	0
<b>Totals</b>	<b>210</b>	<b>229</b>	<b>161</b>	<b>55</b>	<b>45</b>	<b>34</b>	<b>21</b>	<b>56</b>

# - Includes all types of applications and notices for each entity.

Entities/Activities	Application and Notices Under Review (as of February 2, 2016)
<b>*Banks and bank-related (holding companies, etc.)</b>	14
<b>Foreign Banks</b>	0
<b>Trust Companies</b>	4
<b>MSBs</b>	8
<b>PCSEAs</b>	0
<b>CVEs</b>	1
<b>Cemetery Broker</b>	1
<b>Other (Use of Name)</b>	1
<b>Totals</b>	29

**Division Highlights**

- The volume of applications received has declined appreciably over the last two months since the end of the first fiscal quarter of 2016. We believe that decline in application activity is largely attributable to the current economic uncertainty.
- Chartering, Conversion, and Merger Activity – The following transactions have consummated thus far in the second quarter of the 2016 fiscal year:
  - *Banks*
    - Prosperity Bank, El Campo, completed its merger acquisition of Tradition Bank, Houston.
  - *Trust Companies*
    - N/A



Charles G. Cooper  
Commissioner

# TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits *Russell Reese*

Date: February 3, 2016

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2016							
Entity	FY2014		FY2015		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>	
<b>Industry Profile (# / Assets (billions) )</b>												
<b>MSB</b>	136	\$96.0	142	\$104.0	147	\$104.1						
<b>PFC</b>	381	\$3.4	383	\$3.6	378	\$3.6						
<b>PCC</b>	242	\$286.6	243	\$298.0	245	\$305.4						
<b>CB</b>	4	n/a	8	n/a	9	n/a						
<b>PCSEA</b>	11	n/a	11	n/a	11	n/a						
<b>CVE</b>	3	n/a	2	n/a	2	n/a						
<b>Examinations Performed</b>												
<b>MSB</b>	93		97		24							
<b>MSB Limited Scope</b>	0		2		1							
<b>MSB Accepted other State</b>	6		7		3							
<b>PFC</b>	295		259		94							
<b>PFC Limited Scope</b>	10		6		3							
<b>PCC</b>	179		211		29							
<b>PCC Limited Scope</b>	6		1		2							
<b>Ratings (# / %) Assigned to All Regulated Entities</b>												
<b>1</b>	319	43%	340	45%	327	43%						
<b>2</b>	355	48%	332	45%	348	46%						
<b>3,4, &amp; 5</b>	66	9%	78	10%	81	11%						
<b>Noncompliance with Examination Priorities (Past Due)</b>												
<b>MSB</b>	15		8		14							
<b>PFC</b>	1		4		3							
<b>PCC</b>	4		3		3							
<b>Enforcement Actions</b>												
<b>MSB</b>	3		9		1							
<b>PFC</b>	1		10		1							
<b>PCC</b>	0		0		0							
<b>PCSEA</b>	0		0		0							

**NOTES:**

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

**Division Activities:**

- The 20 past due Special Audit examinations are on average 45 days past due.
- Our current examination schedule reflects that four of the past due PFC/PCC examinations were completed in January 2016.
- 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 seven of the past due MSB examinations were completed in January 2016, six will be completed in February 2016 and one past due examination will be accepted in April 2016.
- Special Audits met all performance measures for the first quarter of FY 16.

On December 22, 2015 the Commissioner issued an Order to Cease and Desist against Treasury Vault LLC, Draper, Utah, an unlicensed money transmitter. The Order became final on January 12, 2016. Since 2011, the company has been offering certain on-line money transmission services by receiving Texas consumer funds and shipping an equivalent currency amount to their selected destination without the required license. A hearing to assess fines for the unlicensed activity is forthcoming.

On January 26<sup>th</sup>, Director Reese and Review Examiner Saucillo met with representatives from Regions Bank in Austin from the Funeral and Cemetery Trust Division to discuss the licensing and supervision of the death care industry in Texas. The Funeral and Cemetery Trust Division of Regions Bank is a business unit that focuses solely on funeral and cemetery trust services throughout the country.

On February 1, 2016 the Commissioner entered into a Consent Order with Telmate LLC (Telmate), Ontario, Oregon, an unlicensed money transmitter. Since 2009, the company has been offering certain on-line money transmission services in Texas in the form of receiving monetary value for transmission to Texas inmates without the required license. Telmate has ceased the unlicensed activity and has been assessed a \$51,040 penalty for the time period of unlicensed activity.

On February 10<sup>th</sup> and 24<sup>th</sup>, Director Reese will give presentations on Texas money service business regulations to the Bank & Trust examiners during their BSA/AML Training Conference in Arlington and San Antonio.

During the week of February 16<sup>th</sup> MSB Administrator Gonzales, and other representatives from the Department, will attend the NMLS Annual Conference & Training in Phoenix, AZ. The conference is attended by state and federal regulators and licensees and is focused on assisting both new and experienced NMLS users on the system and regulatory compliance issues that affect their organizations.

**Actual Performance for Output/Efficiency Measures**  
**Fiscal Year 2016**  
**For Period Ending November 2015**

Type/Strategy/Measure	2016 Target	2016 Quarter	2016 YTD	Percent of Annual Target
<b>Output Measures-Key</b>				
<b>1-1-1</b> BANK EXAMINATION				
1. # BANK EXAMINATIONS PERFORMED				
<b>Quarter 1</b>	115	33	33	28.70%
2. # TRUST/IT EXAMINATIONS PERFORMED				
<b>Quarter 1</b>	234	61	61	26.07%
<b>1-2-1</b> NON-BANK EXAMINATION				
1. # SPECIAL AUDIT LICENSEES EXAMINED				
<b>Quarter 1</b>	560	156	156	27.86%
<b>1-3-1</b> APPLICATION PROCESSING				
1. # LICENSE APPLICATIONS COMPLETED				
<b>Quarter 1</b>	284	84	84	29.58%

\* Varies by 5% or more from target.



Charles G. Cooper  
Commissioner

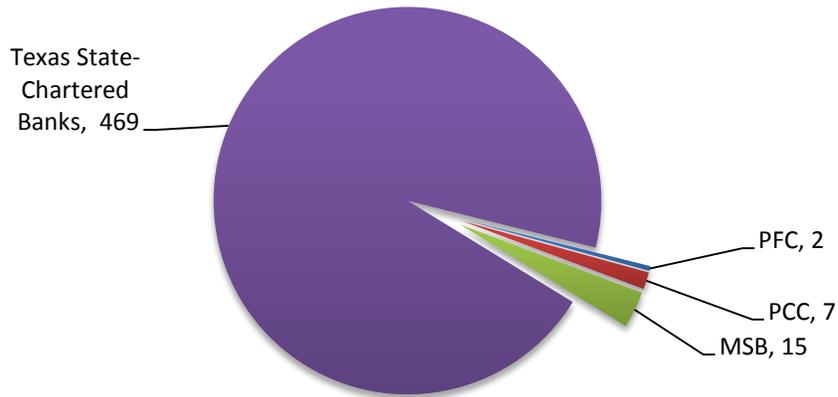
# TEXAS DEPARTMENT OF BANKING

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**To:** Finance Commission Members  
**From:** Wendy Rodriguez, Director of Strategic Support *WR*  
**Date:** February 1, 2016  
**Subject:** Summary of the Strategic Support Division Activities

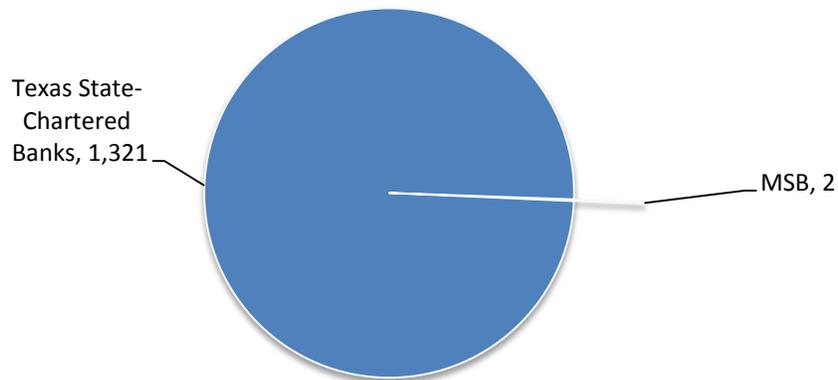
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## Complaints on Regulated Entities September 2015 - December 2015



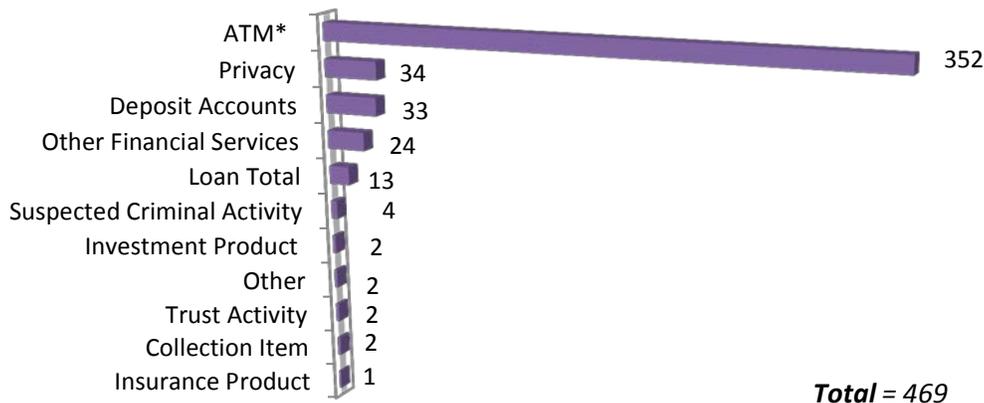
**Recoveries = \$64,958.38**  
**Total = 493**

## Inquiries on Regulated Entities September 2015 - December 2015



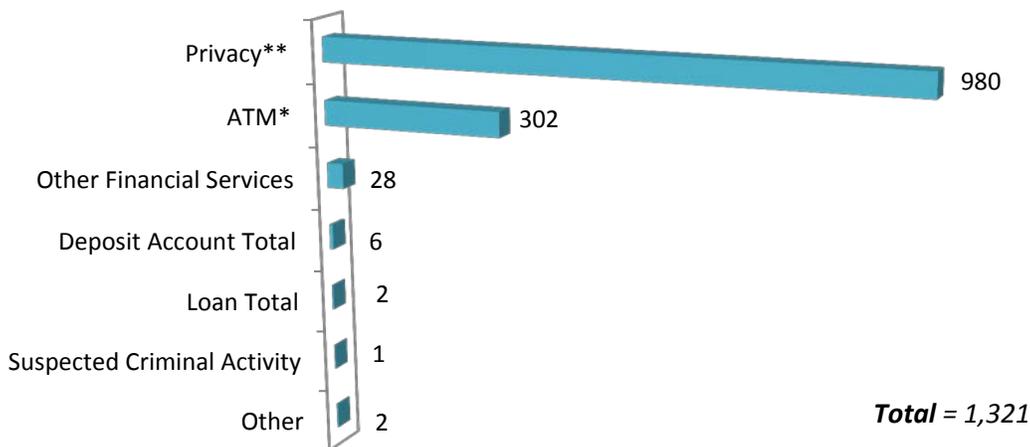
**Total = 1,323**

**State-Chartered Banks and Trust Companies  
 Complaints by Type  
 September 2015 - December 2015**



*\*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.*

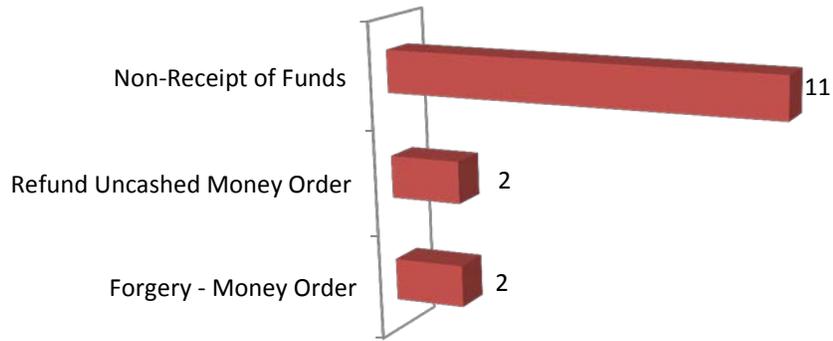
**State-Chartered Banks and Trust Companies  
 Inquiries by Type  
 September 2014 - December 2015**



*\*\* High activity related to annual privacy notice containing the Department's contact information.*

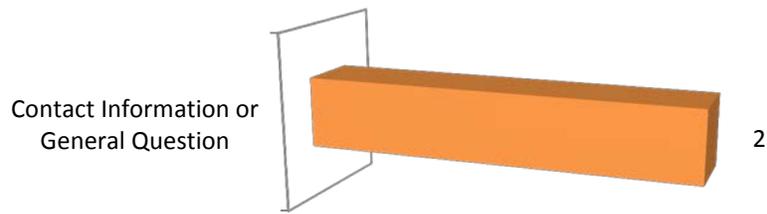
*\*Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.*

**Money Services Businesses  
Complaints by Type  
September 2015 - December 2015**



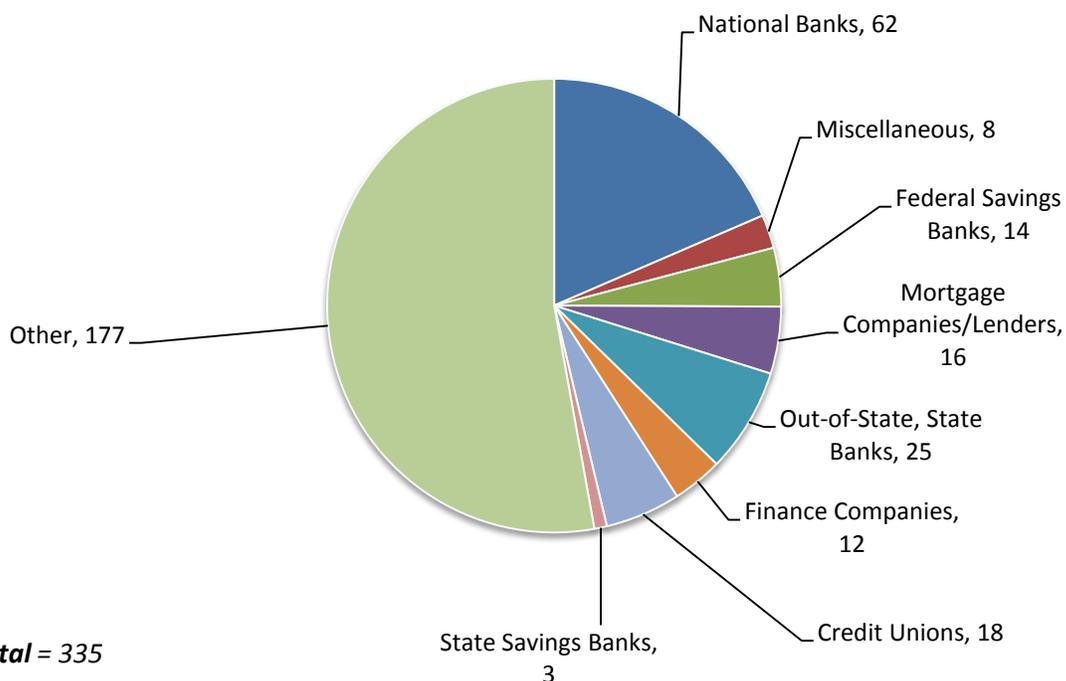
Total: 15

**Money Services Businesses  
Inquiries by Type  
September 2015 - December 2015**



Total: 2

### Complaints and Inquiries Against Nonregulated Entities September 2015 - December 2015



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 – Dec. 2015
State-Chartered Banks	17
Trust	n/a
PCSEA	n/a
PFC/PCC	37
MSB	45

#### CANS Activity

January 1, 2012 – January 31, 2016

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	231	1,421
Texas State-Chartered Savings Banks	25	54
Federal Savings Banks	10	198
State Credit Unions	132	1,037
Federal Credit Unions	229	1,021
National Banks	168	459
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	44
<b>Total</b>	<b>810</b>	<b>4,234</b>

### Bank Examination Testing System (BETS) Activity

	FY 2013	FY 2014	FY 2015	FY 2016 Sep. Jan.
<b>Number of Candidates Passing Each Phase</b>				
<b>I. General Knowledge</b>	3	5	8	5
<b>II. Loan Analysis</b>	8	2	2	2
<b>III. Panel</b>	10	2	4	2
<b>IV. Test Bank</b>	11	1	4	2
<b>Total FE3</b>	<b>16</b>	<b>14</b>	<b>19</b>	<b>19</b>

### Promotions

<b>From FE3 to FE4 (Commissioned Examiner)</b>	9	2	4	1
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### Other Divisional Items:

- **Strategic Planning Meeting**
  - The Strategic Planning Task Force met January 20-21, 2016 in Austin. Participants included internal staff, representatives from the banking, money service businesses, and prepaid funeral contract industries, as well as the banking trade associations. The industry and banking trade association representatives provided insight into their respective industries and their challenges for the future.
- **Policy**
  - Issuance of Supervisory Memorandum 1003 – Examination Frequency for State-Chartered Banks, issued December 31, 2015 was revised to reflect a change for banks with total assets of “\$1 Billion or Less”. These banks may qualify for an 18 month examination cycle.
- **Website Updates**
  - The Texas Prepaid Funeral Contracts information [website](#) was updated, redesigned, and launched on February 1, 2016. The redesign consisted of reorganizing the content and providing an updated graphical look.
  - The web version of Law and Guidance Manual has been updated through December 31, 2015 and is available on the Department website.
- **Financial Education**
  - The Department hosted a financial education webinar on December 10, 2015 related to banker involvement with the Volunteer Income Tax Assistance (VITA) Program. The guest speaker was Ms. Johnnie Bowers from the Internal Revenue Service. The webinar drew 92 participants.



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

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### Memorandum

**TO:** Finance Commission Members  
**FROM:** Catherine Reyer, General Counsel  
**DATE:** February 3, 2016  
**RE:** Legal Division Update

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#### 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 set. Neither party asked for oral argument. 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*, Cause No. 2013-DCL-2248-B, In the 138th Judicial District Court of Cameron County, Texas. This was a case initially filed to seek the appointment of a receiver. The case has been non-suited, and we intend for the Attorney General's office to refile in Travis County.

*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 is continuing to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. We received the most recent status update filed by the receiver on January 8, 2016.

#### 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 March 7, 2016.

**Gifts Received by DOB**

No gifts have been received by the Department since the last Legal Division Memo was submitted.

**Orders**

Since the last Legal Division memo was prepared, the Commissioner issued eight orders, all of which are final public orders:

***Bank and Trust***

- Order No. 2016-001, dated 1/22/16; Consent Order Prohibiting Further Participation, Robert L. Evans, Jr., Bayou Vista, Texas
- Order No. 2016-002, dated 1/22/16; Consent Order Prohibiting Further Participation, Thomas B. Johnson, Pearland, Texas
- Order No. 2016-003, dated 1/22/16; Consent Order Prohibiting Further Participation, Robert L. Hase, Jr., Spring, Texas

***Corporate***

- Order No. 2015-029, dated 1/8/2016; Order to Revoke Registration, Empire CSR, L.P. d/b/a Child Support Resources (Private Child Support Enforcement Agency No. 22), San Antonio, Texas

***Special Audits***

- Order No. 2015-027a, dated 2/1/16; Consent Order, Autolink Payment Services, Inc. d/b/a Mortgage Saver, Santa Monica, California
- Order No. 2015-028a, dated 2/1/16; Consent Order, Automatic Funds Transfer Services, Inc., Seattle, Washington
- Order No. 2015-030, dated 12/22/15, effective 1/12/16; Order to Cease and Desist Activity, Treasury Vault LLC, Draper, Utah
- Order No. 2016-004, dated 2/1/16; Consent Order, Telmate, LLC, Ontario, Oregon

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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.

**PURPOSE:** Amendment to §5.101 revises the section to conform to statutory amendments effective September 1, 2015, made by Section 3 of H.B. 3337 (Acts 2015, 84<sup>th</sup> Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is adopted to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendment to 7 TAC §5.101. The Finance Agencies recommend 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 §5.101 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 1. Finance Commission of Texas***  
***Chapter 5. Administration of Finance***  
***Agencies***  
***7 TAC §5.101***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) adopts the amendment to §5.101, concerning employee training and education assistance programs without changes to the proposed text as published in the January 1, 2016 issue of the *Texas Register* (41 TexReg 15). The amended rule will not be republished.

Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Acts 2015, 84<sup>th</sup> Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is adopted to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

The finance agencies received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §5.101, which provides for training and education assistance to employees of the finance agencies.

***§5.101. Employee Training and Education Assistance Programs.***

(a) For purposes of this rule, "finance agencies" means the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner. Pursuant to the State Employees Training Act, Chapter 656, Subchapter C of the Texas Government Code, it is the policy and practice of the finance agencies to encourage employees' professional development through training and education programs sponsored or supported by the finance agencies.

(b) The finance agencies may provide assistance for education and training that will enhance an employee's ability to perform current or prospective job duties and will benefit both the respective finance agency and the employee.

(c) Approval to participate in a training or education program is not automatic and is subject to eligibility of individual employees as established in the respective finance agency's policy, and the availability of funds within the respective finance agency's budget.

(d) The employee training and education program for the finance agencies may include one or more of the following:

- (1) agency-sponsored training provided in-house or by contract;
- (2) seminars and conferences;
- (3) technical or professional certifications and licenses; or

(4) reimbursement for tuition, fees and required course materials.

(e) The finance agencies will develop and maintain policies for administering the employee training and education program of each respective finance agency. These policies will include:

(1) eligibility requirements for participation;

(2) designation of appropriate level of approval for participation; and

(3) obligations of program participants.

(f) Approval to participate in any portion of a finance agency's training and education program will not in any way affect an employee's at-will status.

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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

**PURPOSE:** Amendments to §33.13 establish that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The two amendments provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. The first change establishes that the time tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. An amendment to the title of §33.13 clarifies that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC §33.13. 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 §33.13 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 33. Money Services Businesses***  
***7 TAC §33.13***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.13, concerning how to obtain a new money services business license without changes to the proposed text as published in the January 1, 2016 issue of the *Texas Register* (41 TexReg 16). The amended rule will not be republished.

These amendments establish that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The department adopts two amendments to §33.13 to provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. Currently, Section 33.13(a) explains that the section

applies to applicants seeking a new money transmission or currency exchange license under Finance Code, Chapter 151. The first change establishes that the time tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. The department also adopts an amendment to the title of §33.13 to clarify that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Finance Code, §151.102(a)(1), which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to implement and clarify Chapter 151.

***§33.13. How Do I Obtain a New License and What are the Deadlines Associated with Applications?***

(a) Does this section apply to me? This section applies if you seek a new money transmission or currency exchange license under Finance Code, Chapter 151. The time tables and deadlines established in this section also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151.

(b) What must I do to apply for a license? To apply for a new money transmission or currency exchange license, you must:

**ADOPTION OF AMENDMENTS TO 7 TAC §33.13**

(1) submit an application on the form prescribed by the department; and

(2) fully complete the application form and provide the information and documentation as specified in the application and the department's instructions.

(c) What does the application process generally involve? The banking commissioner will review your application and, as authorized by Finance Code, Chapter 151, investigate you, your principals including officers, directors and shareholders of a publically traded parent if the principal has 25% or more ownership of the applicant, and all related facts to determine if you possess the qualifications and satisfy the requirements for the license for which you apply. At any time during the review and investigation process, the commissioner may require such information as the commissioner considers necessary to evaluate your application, including an opinion of counsel or an opinion, review or compilation prepared by a certified public accountant. It is your responsibility to provide or cause to be provided all the information the commissioner requires.

(d) What is required for the department to begin processing my application?

(1) Your application must provide and be accompanied by the following at the time you submit the application to the department:

(A) your signature or the signature of your duly authorized officer, as applicable, sworn to before a notary, affirming that the information in the

application and accompanying documentation is true;

(B) an application fee, in the amount established by commission rule, in the form of a check payable to the Texas Department of Banking;

(C) all required search firm reports; and

(D) if you are applying for a money transmission license:

(i) security in the amount of at least \$300,000 that complies with Finance Code, §151.308, and an undertaking to increase the amount of the security if additional security is required under that section; and

(ii) an audited financial statement demonstrating that you satisfy the minimum net worth requirement established by Finance Code, §151.307(a), and that, if the license is issued, you are likely to maintain the required minimum; or

(E) if you are applying for a currency exchange license:

(i) security in the amount of \$2,500 that complies with Finance Code, §151.308; and

(ii) a financial statement demonstrating your solvency.

(2) The department may refuse to process and may return to you an application submitted without all the items identified in paragraph (1) of this subsection. If you submit your application fee, but fail to include one or more of the other items

identified in paragraph (1) of this subsection, the department will return or refund the fee or, if you promptly submit an application that includes the missing items, apply the fee to your subsequent application.

(e) When will the department tell me if my application is complete and accepted for filing? On or before the 15th day after the date the department receives your application, and if the application is not returned as provided for in subsection (d)(2) of this section, the department will notify you in writing that:

(1) your application is incomplete and the additional information specified in the notice is required before the department will accept your application for filing; or

(2) your application is complete and accepted for filing.

(f) When must I provide the additional information the department requires to consider my application complete and to accept it for filing?

(1) Subject to paragraph (2) of this subsection, 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.

(2) 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.

(3) After reviewing the information you provide in response to the department's initial 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.

(g) What happens if I do not provide the required information?

(1) The banking commissioner may determine that your application is abandoned, without prejudice to your right to file a new application, if the department does not receive the information required in the application and department's instructions or the additional information required by the department within the time specified in subsection (f) of this section or as otherwise requested by the commissioner in writing to you.

(2) 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.

(h) After the department accepts my application for filing, when will I know if the application is approved? On or before the 45th day after the date the department accepts your application for filing, the banking commissioner will approve or deny your application and advise you in writing of the decision.

**ADOPTION OF AMENDMENTS TO 7 TAC §33.13**

**Page 4 of 4**

(i) May I appeal the denial of my application? Yes. If the banking commissioner denies your application, you may appeal the denial in accordance with Finance Code, §151.205(b).

(j) What if the department does not comply with the application processing times? If the department fails to comply with the application processing times specified in subsections (e) or (h) of this section, you may file a complaint under §33.15 of this title (relating to Failure to Comply with Application Processing Times).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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BIOGRAPHICAL  
THOMAS RAY ELAM  
AKA TOM R. ELAM

CURRENT POSITION from year 2000:

Chief Executive Officer  
United Benefits, Inc. and subsidiaries; United Funeral Benefit Life Insurance Company, United Funeral Directors Benefit Life Insurance Company, and United Pre-Need Funeral Plans, Inc.

PRIOR POSITION 1989 to 2000:

President  
Majority owner.  
United Benefits, Inc. and subsidiaries; United Funeral Benefit Life Insurance Company, United Funeral Directors Benefit Life Insurance Company, and United Pre-Need Funeral Plans, Inc.

PRIOR POSITION 1968 TO 1989:

Independent Certified Public Accountant in public practice including specializing in insurance company regulatory reporting and taxation. Clients included the above companies and/or their predecessors. Consulted management in all aspects of company operations.

MILITARY SERVICE 1966 to 1968:

United States Army. Graduated from U. S. Army Infantry Officer's School and U. S. Army Airborne School, Fort Benning, Georgia (1966).  
Served 2 years active duty, 2 years active reserve, 2 years inactive reserve

OWNER AND PRINCIPAL OPERATIONS MANAGER of several funeral homes and a cemetery from 1972 to 1991.

EDUCATION:

Education: BBA degree from Midwestern State University, Wichita Falls, TX with major in Accounting (1965). Named Outstanding Graduate, School of Accounting (1965).

PROFESSIONAL LICENSES:

Certified Public Accountant, State of Texas, 1969 to present.  
General Lines Insurance Agent, Texas and Oklahoma.

BIOGRAPHICAL  
THOMAS RAY ELAM  
AKA TOM R. ELAM  
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INDUSTRY:

Member of and President (1994-1995) of Texas Association of Life Insurance Company Officials (TAIO), an association of small and medium sized insurance companies doing business in Texas. As a member of TAIO testified before the Insurance Committee of the Texas House of Representatives on several occasions. Member Company of Texas Association of Life and Health Insurers. Represented United Benefits, Inc. and its subsidiaries before the Insurance Departments of the States of Texas and Oklahoma and the Texas Banking Department. Member of State of Texas Department of Banking Prepaid Funeral Guaranty Fund Advisory Council

COMMUNITY:

Served on the Board and as Chairman of the Board of numerous worthwhile community organizations including the United Regional Health Care System of Wichita Falls ( 20 years including 2-2 year terms as Chairman), The Texas Association of Rural and Community Hospitals, The Greater YMCA of Wichita Falls (Chairman), The Housing Authority of the City of Wichita Falls (Chairman), the Budget & Allocation Committee of the Greater United Way of Wichita Falls, the Midwestern State University Alumni Association(Chairman) and others.

Married: Wife, Patricia, 3 Children, and 6 Grandchildren.

Religious affiliation: Member, Trinity Church, Cedar Hill, Texas

Interests: Family Activities, Golf, and Snow Skiing

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.

**PURPOSE:** Amendment to §15.42 would revise the section to 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.

**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 amendment to 7 TAC §15.42 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), proposes to amend §15.42, concerning establishment and closing of a branch office. The amended rule 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.

Deputy Commissioner Robert L. Bacon, 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 banks will be better able to serve their customers by more easily relocating branches within a one-mile radius.

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 amendment must be submitted no later than 5:00 p.m. on April 4, 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](mailto:legal@dob.texas.gov).

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) - (e) (No change.)

(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 and Cost Deposits). 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 14<sup>th</sup> day after receipt of the protest or the application, whichever occurs later.

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

(g) - (i) (No change.)

(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. With prior written approval of the banking commissioner, a bank may relocate an approved branch. The bank must file an application to relocate a

~~branch accompanied by the required application fee pursuant to §15.2 of this title. The bank must publish notice pursuant to §15.5 of this title in the community of the current branch and of the proposed branch. With respect to relocating an interstate branch office maintained pursuant to Finance Code, §32.203 and §203.001(a), the applicant must provide information regarding applicable host state law and evidence of compliance with the law.~~

(k) (No change.)

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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.

**PURPOSE:** Amendment to §15.2 would reduce the filing fee from \$2,000 to \$200 for branch relocations within a one-mile radius. Amendment to §15.3 would delete the provision concerning expedited filings for branch relocations of less than one mile.

**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 §15.2 and §15.3 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), proposes to amend §15.2, concerning filing and investigation fees, and §15.3, concerning expedited filings. The amended rules are proposed to 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 proposed amendment to 7 TAC §15.42(j), filings for branch relocations within a one-mile radius would be 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 proposed amendment to §15.2 would reduce the filing fee from \$2,000 to \$200 for branch relocations within a one-mile radius. The proposed amendment to §15.3 would delete the provision concerning expedited filings for branch relocations of less than one mile.

Deputy Commissioner Robert L. Bacon, Texas Department of Banking, has determined that for the first five-year period the proposed amendments are in effect, there will be a minimal decrease in revenue from

filing fees submitted as a result of enforcing or administering the rules. However, staff time to process the notices of these relocations will be reduced accordingly, and Mr. Bacon estimates that the lower fees will still be sufficient to recover the cost of staff time needed to process the notices. Mr. Bacon has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for local government.

Mr. Bacon also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that banks will have greater clarity on the streamlined requirements for branch relocations.

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 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 April 4, 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](mailto:legal@dob.texas.gov).

The amendments are proposed under Finance Code, §32.203(b), which provides

**PROPOSED AMENDMENTS TO 7 TAC §15.2 AND §15.3**

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) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

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

(8) \$200 for a notice of branch relocation ~~\$2,000 for an application to relocate a branch office pursuant to §15.42(j) of this title, or \$1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title, provided that the department will not require a filing fee for an application for a branch office to be relocated in a low or moderate income area and where no other depository institution operates a branch or home office;~~

(9) – (23) (No change.)

(c) – (f) (No change.)

**§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):

(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) Branch relocations less than one mile with no abandonment of the community pursuant to the Finance Code §32.203(b), and §15.42 of this title; and~~

~~(3)~~ (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) - (e) (No change.)

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7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment 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:** Finance Code §§187.201 and 187.202 govern an out-of-state trust institution that wishes to establish a representative trust office in Texas, which 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.

Proposed §21.43 would establish 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. Based on a simplified notice 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 proposed §21.43 would not be subject to banking commissioner approval or disapproval.

With respect to a state-chartered trust company or bank that is not federally insured, proposed §21.44 would require 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:** 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 §21.43 and §21.44 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 and 21.44***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §21.43 and §21.44, concerning representative trust offices of out-of-state trust institutions. The new rules are proposed to implement and clarify the requirements of Finance Code §187.202.

Finance Code §§187.201 and 187.202 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, proposed §21.43 would establish 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 proposed §21.43 would not be 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 state of formation. With respect to these institutions, proposed §21.44 would fully implement 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 would be required to file a notice with the banking

commissioner containing the information specified by proposed §21.44(a). Pursuant to proposed §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 proposed §21.44(a)(9).)

Proposed §21.44(c) would permit the institution to commence business at its proposed office 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 would be able to 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 would not be able to 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 interests.

Finally, both proposed §21.43(c) and proposed §21.44(d) would 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.

Deputy Commissioner Robert L. Bacon, 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 amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is the clarification of statutory requirements and decision criteria applicable to an out-of-state trust institution seeking to establish a representative trust office in this state.

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 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 April 4, 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, §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.

Finance Code, §187.202, is affected by the proposed new sections.

**§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;

(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.

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC §19.1 and §19.21, Concerning Grandfathered Loans and Grandfathered Investments, respectively.

**PURPOSE:** Repeal of §19.1 and §19.21 would eliminate 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:** The Department recommends that the Commission approve publication of the proposed repealed rules in the *Texas Register* for comment.

**RECOMMENDED MOTION:** I move that we publish the proposed repeal of 7 TAC §19.1 and §19.21 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), proposes to repeal §19.1 and §19.21, concerning Grandfathered Loans and Grandfathered Investments, respectively.

The provisions proposed for repeal concern 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. Therefore, their repeal is recommended.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the repealed rules.

Mr. Bacon also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal is greater clarity and elimination of obsolete rules.

For each year of the first five years that the repeal will be in effect, there will be no

economic costs to persons required to comply with the repeal 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 repeal must be submitted no later than 5:00 p.m. on April 4, 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](mailto:legal@dob.texas.gov).

Repeal of 19.1 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 §184.201 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 (e) –(e) of this section, a trust company may not~~

PROPOSED REPEAL OF 7 TAC §19.1 AND §19.21

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 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(c), 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.~~

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.

**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 is too broadly drafted, ostensibly permitting service 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) is proposed to be amended to explicitly limit permissible family members to descendants of the shared common ancestor.

**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 proposed amendments to 7 TAC §21.24 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), proposes an amendment to §21.24, regarding exemptions for family trust companies.

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 include individuals that are not eligible members of the family as defined by §21.24(a)(1). Section 21.24(b)(2)(C) is therefore proposed to be further amended to clarify that eligible family members must be descendants of the designated shared common ancestor.

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-year period the section as proposed will be in effect, the public benefit anticipated as a result of enforcing this section is the clarification of highly complex and recently amended statutory standards to aid the industry in compliance.

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, no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on April 4, 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 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.

Finance Code §182.011 and §182.012 are affected by the proposed amendments.

***§21.24. Exemptions for Family Trust Companies.***

(a) (No change.)

(b) Application for exemption.

(1) (No change.)

(2) The application must:

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

(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) - (g) (No change.)

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**C.**

**Department of Savings  
and  
Mortgage Lending**

## C. Texas Department of Savings and Mortgage Lending

### 1. Industry Status and Departmental Operations – State Savings Bank Activity:

#### a. Industry Status

The financial data on Texas state thrifts had not been finalized by the FDIC prior to the preparation of this report. A detailed report on the fourth quarter of calendar year 2015 will be presented at the next meeting of the Finance Commission.

There are 27 state savings banks, all of which are rated a Composite 1 or 2, with no outstanding public enforcement actions. The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Energy prices, cyber security, interest rate risk, construction lending, and liquidity risk all continue to be areas of particular focus.

#### 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 JJI 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 orders issued by SML, with federal approvals pending.

#### c. Other Items

### ANNUAL FEE ASSESSMENT RATES - NEW

#### Assessment Schedule - Effective March 1, 2016

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$6,092	0.000000000	\$0
2 million	20 million	6,092	0.000240512	\$2 million
20 million	100 million	10,421	0.000192409	20 million
100 million	200 million	25,813	0.000125061	100 million
200 million	1 billion	38,319	0.000105822	200 million
1 billion	2 billion	122,976	0.000086581	1 billion
2 billion	6 billion	209,557	0.000076960	2 billion
6 billion	20 billion	517,397	0.000065485	6 billion
20 billion	40 billion	1,434,187	0.000049329	20 billion
40 billion	250 billion	2,420,767	0.000038542	40 billion
250 billion		10,514,587	0.000038156	250 billion

#### Condition premium, assessed in addition to the regular assessment

CAMEL < 3	0 % of regular assessment
CAMEL = 3	50 % of regular assessment
CAMEL > 3	100 % of regular assessment

## ANNUAL FEE ASSESSMENT RATES - CURRENT

### Current Assessment Schedule 1\* - Effective March 1, 2015

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$6,092	0.000000000	\$0
2 million	20 million	6,092	0.000240512	\$2 million
20 million	100 million	10,421	0.000192409	20 million
100 million	200 million	25,813	0.000125061	100 million
200 million	1 billion	38,319	0.000105822	200 million
1 billion	2 billion	122,976	0.000086581	1 billion
2 billion	6 billion	209,557	0.000076960	2 billion
6 billion	20 billion	517,397	0.000065485	6 billion
20 billion	40 billion	1,434,187	0.000049329	20 billion
40 billion	250 billion	2,420,767	0.000038542	40 billion
250 billion		10,514,587	0.000038156	250 billion

\* Maintains 50% of the Office of the Comptroller of the Currency's Annual Assessment, OCC 2014-59. Applicable to charters that have paid six quarterly assessments at the 75% rate.

### Current Assessment Schedule 2\* - Effective March 1, 2015

Assets Over	Not Over	Amount**	Plus	Over
\$0	\$2 million	\$9,138	0.000000000	\$0
2 million	20 million	9,138	0.000360768	\$2 million
20 million	100 million	15,632	0.000288614	20 million
100 million	200 million	38,720	0.000187592	100 million
200 million	1 billion	57,479	0.000158733	200 million
1 billion	2 billion	184,464	0.000129872	1 billion
2 billion	6 billion	314,336	0.000115440	2 billion
6 billion	20 billion	776,096	0.000098228	6 billion
20 billion	40 billion	2,151,281	0.000073994	20 billion
40 billion	250 billion	3,631,151	0.000057813	40 billion
250 billion		15,771,881	0.000057234	250 billion

\*\*Maintains 75% of the Office of the Comptroller of the Currency's Annual Assessment, OCC 2014-59. Applicable to new charters for their first six quarterly assessments.

### Condition premium, assessed in addition to the regular assessment

CAMEL < 3	0 % of regular assessment
CAMEL = 3	50 % of regular assessment
CAMEL > 3	100 % of regular assessment

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**2. Industry Status and Departmental Operations – Mortgage Lending Activity:**

**a. Residential Mortgage Loan Originators**

Current Licensing Population:

License Type As of 01/31/2016	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>	80	n/a	
<i>Mortgage Company</i>	1,002	418	
<i>Mortgage Banker</i>	371	2,001	
<i>Mortgage Servicer</i>	142	n/a	
<b>Totals</b>	<b>1,607</b>	<b>2,421</b>	

The Department is currently in the “Reinstatement” period of renewals, which runs from January 1 through February 29, and allows those licensees that did not timely renew, the ability to request renewal. If they did not timely renew, their license status went to “Terminated-Failed to Renew.” As of January 31, 2016, the Department has received 320 reinstatement requests. Prior to the reinstatement period, the Department received renewal requests from 18,158 individuals and 3,730 companies and branches. Additionally, between November and December, the renewal period, the Department received 15,067 amendment filings and 1,275 new license requests.

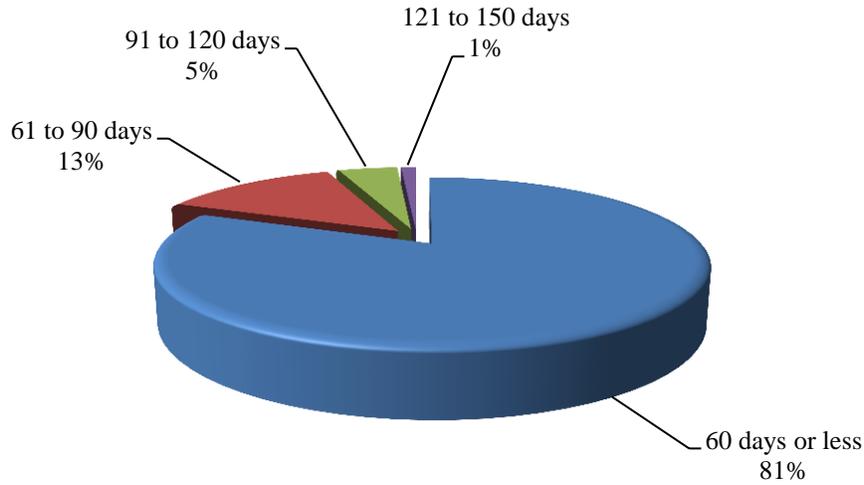
**b. Mortgage Examinations**

Through the end of the 1<sup>st</sup> quarter of FY2016, a total of 112 mortgage entity examinations were conducted covering 1,077 licensees. Examinations are continuing to identify various degrees of unlicensed/unauthorized activity and the issuance of incomplete conditional qualification/approval letters.

**c. Consumer Complaints/Legal Issues**

The following charts reflect the consumer complaint information through the end of the 1<sup>st</sup> quarter of FY2016. The aging of the open complaints remains within the target range with no open complaints over 180 days. Open complaint aging has remained within acceptable ranges with 94% being aged less than 90 days.

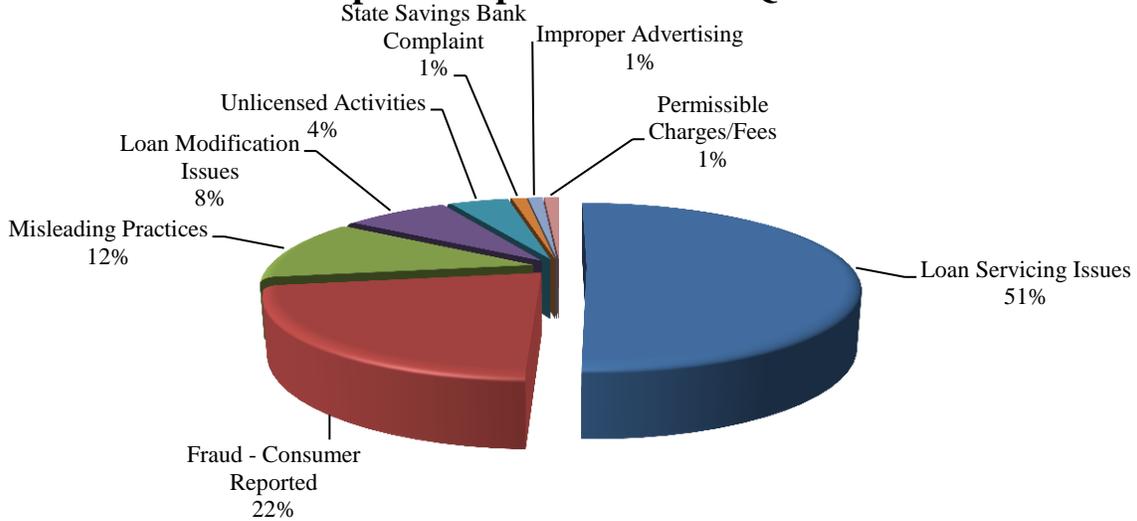
### Aging of Open Complaints as of 1st Qtr FY2016



Total Open Complaints as of 11-30-2015 = 91

Loan Servicing complaints continue to be the largest complaint category accounting for 56% of the total number of complaints received in the 1<sup>st</sup> quarter of FY2016. This represents a 5% decrease when compared to the same reporting period in FY2015. The total number of complaints received in the 1<sup>st</sup> quarter of FY2016 increased 18% when compared to the same period in FY2015. The next two charts show the nature of the complaints remaining open as well as the nature of all complaints received during the 1<sup>st</sup> quarter of FY2016.

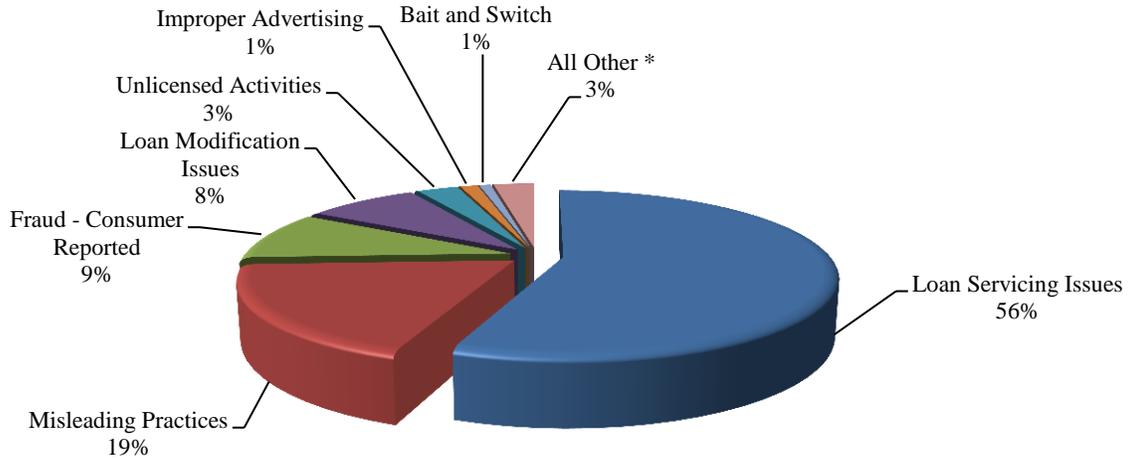
### Nature of Open Complaints as of 1st Qtr FY2016



Total Open Complaints as of 11-30-2015 = 91

### Nature of Complaints Received - Year-to-Date FY2016

(Complaints Received 09-01-2015 to 11-30-2015)



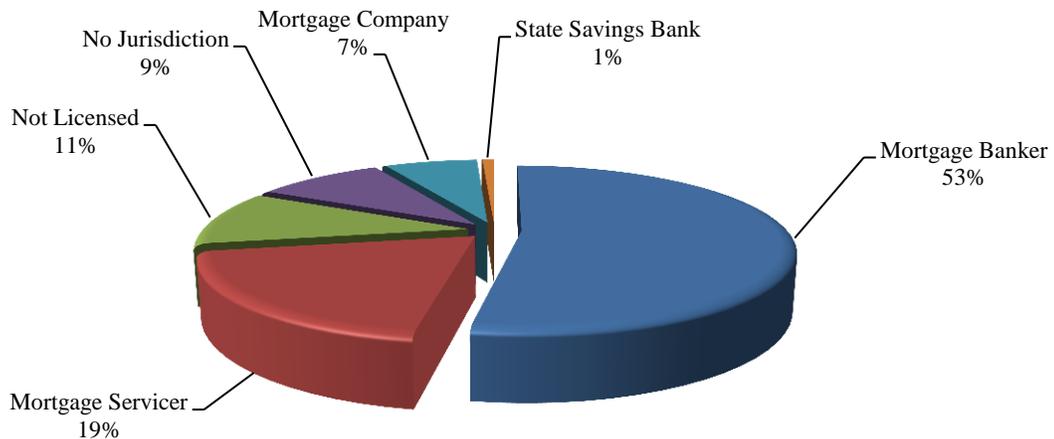
Total Complaints received in FY2016 Year-to-Date = 233

\* The "All Other" Category includes: Inadequate Disclosures, Permissible Charges/Fees, Failure to Pay Appraisers/Vendors, Customer Relations Issues, and complaints against State Savings Banks (2)

The final chart shows the complaints sorted by license type.

### Respondent License Types - Complaints Received Year-to-Date FY2016

(Complaints Received 09-01-2015 to 11-30-2015)



Total Complaints Received Year-to-Date FY2016 = 233

Legal Activity:

SOAH Hearings - Recently Held:

11/05/2015      *Denial of License Renewal*

**SOAH Docket No. 450-16-0442; Department of Savings and Mortgage Lending v. Catherine Sims.** In this case, the Department's staff proposed to deny Ms. Sims's application to renew her residential mortgage loan originator license on the grounds that Ms. Sims failed to demonstrate financial responsibility and character to warrant a determination that she would operate honestly and fairly. The Administrative Law Judge concluded that the Department's staff proved that Ms. Sims was not entitled to have her application granted, and recommended that the Department deny the renewal application. On January 22, 2016, the Commissioner issued the Final Order denying the application for license renewal.

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. Exceptions were filed on February 2, 2016, by the Applicant. The Department's staff has until February 17, 2016, to respond to the exceptions.

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.

SOAH Hearings - Upcoming:

02/11/2016      *Hearing Scheduled on Appeal of Order to Cease and Desist*

**SOAH Docket No. 450-16-1739; Department of Savings and Mortgage Lending v. Laura Mitchell.** Parties entered into an agreement to resolve this matter. Matter is pending approval and dismissal by the ALJ.

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 pending.

Gift Reporting:

**FFIEC-SLC Meeting**

The Savings and Mortgage Lending Commissioner, as a member of the Federal Financial Institutions Examination Council - State Liaison Committee (FFIEC-SLC), was provided round-trip airfare from Austin to Washington, DC to attend their 4<sup>th</sup> Quarter Meeting, with a total value of \$558.20. The meeting was held in early December 2015. The Commissioner was also reimbursed

\$614.16 on December 23rd, 2015, to cover per diem and travel related expenses. The total amount for these gifts is **\$1,172.36**.

Litigation:

The Department is not currently named in any litigation, nor is it aware of any expected litigation.

**d. Other Items**

**Actual Performance for Output/Efficiency Measures**

Type/Strategy/Measure	2016 Target	2016 Actual	2016 YTD	Percent of Annual Target
<b>Output Measures-Key</b>				
1-1-1 BANK EXAMINATION				
1. THRIFT EXAMINATION AND SUPERVISION				
<b>Quarter 1</b>	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.				
2-1-1 MORTGAGE LICENSING				
1. # NEW LIC/ORIGINATORS APPROVED				
<b>Quarter 1</b>	6,500	1,793	1,793	27.58%
2-1-2 MORTGAGE EXAMINATION				
1. NUMBER OF LICENSEES INSPECTED				
<b>Quarter 1</b>	3,600	1,077	1,077	29.92%
3-1-1 COMPLAINT AND INQUIRY PROCESS				
1. # COMPLAINTS PROCESSED				
<b>Quarter 1</b>	900	248	248	27.56%

\*Varies by 5% or more from target.

Commissioner Jones delivered the opening address at the Texas Mortgage Roundup February 10, 2016, held in San Antonio.

Commissioner Jones, Director of Mortgage Examination Tony Florence, and Director of Licensing O'Shields, attended the NMLS annual conference the week of February 15, 2016 in Phoenix, Arizona.

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### **3. Fiscal/Operations Activity:**

#### **a. Funding Status/Audits/Financial Reporting**

Funding Status/Budget – Staff has closed out the 1<sup>st</sup> quarter of FY16. The financials are attached elsewhere in the package. As of the end of 1<sup>st</sup> quarter, the revenues are at 113% of budget, due to the volume of license fees and administrative penalties, and the expenditures at 89% of budget, due to lower personnel and travel expenses.

Financial Reporting – Staff has prepared and submitted to oversight agencies the following report:

Annual Report of Non-Financial Data to the Governor’s Office – The report is a compilation of miscellaneous non-critical data.

#### **b. Staffing**

As of February 1, 2016, the Agency was staffed at 52 regular full time and 1 part time employees with 64 FTEs available.

In January, a part-time Thrift Financial Examiner began his employment with the Department and one Thrift Financial Examiner was terminated. Several vacancies are in different stages of the hiring process.

#### **c. Other Items**

The Department held Management training and a Strategic Planning session on January 20 – 21, 2016 at the J.J. Pickle Research Center.

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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.

**PURPOSE:** The purpose of the proposed 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 proposed 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 proposed to 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. Amendments to Chapter 57 are proposed 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 is proposed for repeal, as it is unnecessary by federal law. Amendments to Chapter 61 are proposed to include the removal of unnecessary words and correction of the names of agencies and the title of the Texas Government Code. Amendments are proposed to Chapter 63 to 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. Sections 63.10 and 63.14 are proposed for repeal as such fees are deemed unnecessary for savings and loan associations. Amendments are proposed to Chapter 64 to address the proper location of books and records of a savings and loan association. The proposed amendments improve word choice and punctuation, and expand on the permissibility of offsite electronic backups. Amendments are proposed to Chapter 65 to 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 65.22 is proposed for repeal as it is covered in section 65.11. Amendments are proposed to Chapter 67 to 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. Sections 67.4 and 67.14 are proposed for repeal as dated and unnecessary. Amendments are proposed to Chapter 69 to include clarifications and gender neutralization. Amendments are proposed to Chapter 71 to 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. Amendments are proposed to Chapter 73 to include gender neutralization of references to the Commissioner, removal of unnecessary words, correction of the Department name, and clarifying language.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments and repeals in 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendments and repeals to 7 TAC Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 in the *Texas Register* for comment.

***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, proposes to amend 7 Texas Administrative Code: Chapter 51, concerning Charter Applications; Chapter 53, concerning Additional Offices; Chapter 57, concerning Change of Office Location or Name; Chapter 59, concerning Foreign Building and Loan Association; Chapter 61, concerning Hearings; Chapter 63, concerning Fees and Charges; Chapter 64, concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints; Chapter 65, concerning Loans and Investments; Chapter 67, concerning Savings and Deposit Accounts; Chapter 69, concerning Reorganization, Merger, Consolidation, Acquisition, and Conversion; Chapter 71, concerning Change of Control; and Chapter 73, concerning Subsidiary Corporations..

In general, the purpose of the proposal 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed amendments make references to the Commissioner gender neutral.

Section 51.13 addresses savings and loan management qualifications. The proposed 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 proposed amendment removes unnecessary words relating to another section of this title.

In Chapter 53, the proposed 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 proposed 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 proposed amendments correct word choice and capitalization.

Section 53.3 addresses branch applications for savings and loan associations. The proposed 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 proposed 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 proposed 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 proposed 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 proposed amendments revise existing language to provide enhanced clarity.

Section 53.18 addresses savings and loan association offices in other states or territories. The proposed amendments make the application and hearing processes for such offices consistent with those for domestic offices.

In Chapter 57, the proposed 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 proposed 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 proposed 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

proposed amendments make references to the Commissioner gender neutral.

Section 57.4 addresses application forms relevant to this chapter. The proposed amendments improve and correct word choices.

Chapter 59 has only one section or rule in it §59.1 concerning Foreign Building and Loan Associations. If repealed 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 proposed 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 proposed 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 proposed amendments remove unnecessary words in reference to other sections of this title.

In Chapter 63, the proposed 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 proposed amendment improves word choice.

Section 63.2 addresses the application fee for a savings and loan branch office. The proposed amendments reduce the fee and improve word choice.

Section 63.3 addresses the application fee for a savings and loan mobile facility. The proposed 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 proposed amendment improves word choice.

Section 63.5 addresses the fee for special examinations of savings and loan associations. The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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") and is proposed for repeal. Such a fee is not charged to state savings banks and is therefore deemed unnecessary for savings and loan associations.

Section 63.11 addresses the application fee for a change of control of a savings and loan association. The proposed 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 proposed amendments reduce the initial fee.

Section 63.14 addresses the fee for conversion into another institution and is proposed for repeal. Such a fee is not charged to state savings banks and is therefore deemed unnecessary for savings and loan associations.

Section 63.15 addresses the fees charged for public information requests. The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed amendments clarify the procedures and update the contact

information for the Department.

In Chapter 65, the proposed 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 proposed 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 proposed amendment corrects one word.

Section 65.3 provides definitions for use in this Chapter. The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed amendments clarify terms used.

Section 65.20 addresses investment made by savings and loan associations in deferred payment obligations. The proposed amendments clarify references to other titles.

Section 65.22 is proposed for repeal as an unnecessary restriction on the business of a savings and loan association as this issue is covered in section 65.11.

Section 65.23 addresses restrictions on loan transactions with third parties. The proposed amendment makes a reference to the Commissioner gender neutral.

In Chapter 67, the proposed 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 proposed 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 and thus such section is proposed for repeal. Repeal will put

savings and loan associations on a similar competitive level as other depository charters.

Section 67.6 addresses distributions of savings and loan earnings on other than regular accounts. The proposed amendment improves clarity.

Section 67.7 allows a savings and loan association to contract for 90-day advance notice of savings account withdrawal. The proposed amendments provide clarifying language and update terms used.

Section 67.8 describes deposits permissible for savings and loan associations beyond savings accounts. The proposed 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 proposed 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 proposed amendment revises language for enhanced clarity.

Section 67.12 permits savings and loan associations to allow withdrawal from negotiable order of withdrawal accounts. The proposed amendments correct the title of the rule, and correct grammar.

Section 67.13 is proposed to be amended to clarify applicability to all savings and loan associations and remove 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.

Section 67.15 permits the raising of capital for a savings and loan association through noninterest-bearing deposits. The 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 amendments revise existing language to provide clarity.

In Chapter 69, the proposed amendments include clarifications and gender neutralization.

Section 69.2 describes the necessary content of a savings and loan association merger application. The proposed 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 proposed amendment revises language for clarity.

Section 69.4 requires a hearing for any savings and loan merger application. The proposed 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 proposed 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 proposed 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 proposed amendments clarify phrasing.

Section 69.8 provides an exemption from application for supervisory mergers of savings and loan associations. The proposed 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 proposed 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 proposed 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 proposed amendments make references to the Commissioner gender neutral, revise language for clarity, and revise references to applicable statutes.

In Chapter 71, the proposed 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 proposed 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 proposed 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. Two comments from state savings bank representatives were received during a pre-comment period. Each comment was primarily concerned with the applicability of the 10% rebuttable presumption of control on state savings banks, with one questioning the need for presumed control when one party controls more than 10%, but less than 25%, of an association and another controls more than 25%. In each case, a Department representative communicated with the commenting party, explained that this section does not apply to state savings banks, and discussed further issues to the satisfaction of the individual. In each case, the comments were withdrawn.

Section 71.3 addresses the acquisition of a savings and loan association. The proposed 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 proposed 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 proposed amendments make reference to the Commissioner gender neutral.

Section 71.6 addresses the application for acquisition of a savings and loan association. The proposed 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 proposed amendment removes unnecessary words in reference to an association.

Section 71.8 addresses transactions which are exempt from the provisions of this chapter. The proposed amendments clarify the applicability of this section and remove unnecessary words in reference to the name of the Department.

In Chapter 73, the proposed 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 proposed amendments make references to the Commissioner gender neutral and provide clarifying language.

Section 73.2 addresses applications for

savings and loan association subsidiaries. The proposed 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 proposed amendments clarify that indirect ownership is covered and remove an unnecessary word.

Section 73.4 addresses savings and loan association subsidiary operations. The proposed 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 proposed amendment removes unnecessary words in reference to other sections of this title.

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](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The amendments are proposed 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 proposed 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 proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61-89.

<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 [Articles of Incorporation] of a new association are presented to the savings and mortgage lending commissioner for [his] approval, such Certificate of Formations [Articles] 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 [facsimile] 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 [Articles of Incorporation] 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 Change.

(c) No association with an approved charter shall open or do business as a savings and loan association until the commissioner certifies receipt of [that he has received] 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 [he] shall make or cause to be made an investigation or onsite review of the application. The application form is available from the [Texas] 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 [filed]. 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 [(relating to Publication of Notice of Charter Application)] 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 [(relating to Notice to Associations)]. 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 [the following form:]

[Attached Graphic201200994-1.html Attached Graphic]

**§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 [(relating to Publication of Notice of Charter Application)] 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 [shall] be held at the commissioner's discretion on the application even though [there are] no person [persons] has [who have] 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 [his] 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 [he] 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 [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.

### **§51.9 Time of Decision on Charter Applications**

The commissioner shall render a [his] 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 [(relating to Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications)], 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 [he is] currently managing a savings and loan association in this state, or if at the date of filing an application [he] 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 [he has] less than three years active experience in real estate mortgage lending or has filed for bankruptcy; [been a bankrupt or] has made a voluntary assignment for benefit of creditors; [or] has been convicted of a felony; [or] defaulted on a fidelity bond; or has had a [his] license revoked under The Real Estate License Act, [or] 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 [(relating to Fees and Charges)], 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 [chapter], 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 [chapter], the following types of additional offices may be established and maintained by a savings association:

(1) branch [Branch] offices at which the association may transact any business that could be done in the home office;

(2) loan [Loan] production offices (loan offices) at which the association, may transact business, as provided by §53.5(a) of this title [chapter], but at which no other business of the association is transacted;

(3) mobile [Mobile] facilities at which the association may transact any business of the association that could be done in the home office provided that a [. A] detailed record of the transactions at such facility shall be maintained;

(4) administrative [Administrative] offices at which the association may transact administrative functions of the association, as provided by §53.5(b) of this title [chapter], but at which no other business of the association is transacted – such offices [. Such office] may be located separate and apart from the location of any other facility of the association, but all

[. All] original records of the association shall be present and maintained at all times at the home office of the association;

(5) courier/messenger [Courier/messenger] service to transport items relevant to the association's transactions with its customers, including courier services between financial institutions; and

(6) deposit [Deposit] production offices at which the association may transact business, as provided by §53.5(c) of this title [chapter], 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 [therefore]; 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 [from] 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. [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) Upon request, the commissioner shall

furnish sample [approved] forms for [of] 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 [he] 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 [he shall have affirmatively found from the data] furnished with the application, [the] evidence adduced at the hearing, and department [his official] records that:

(1) the [The] applying association has had no supervisory problems that [which] would affect its ability to properly operate the branch [such] office;[.]

(2) the [The] proposed operation will not unduly harm any other association operating in the same community as [of] the proposed branch;[.]

(3) a [A] separate enclosed office area will be provided (utilization of [such enclosure may be by] counters or railings of less than ceiling height is acceptable);[.]

(4) the [The] proposed branch office will have qualified full-time management;[.]

(5) there [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 [as to indicate a] profitable operation is feasible [to the association] within a reasonable period of time;[.]

(6) the [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[. 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.]

(7) the [The] character, responsibility, and general fitness of the current directors and officers of the applicant are such that they [as to] 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 [this] 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 [Prior] to the establishment and operation of such facility, the association shall obtain approval of the commissioner for permission to do so;[.]

(2) such [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 [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 [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 [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 [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 [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 [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 [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 [(relating to Additional Offices)], are [shall] not [be] applicable to such purchases, and such purchase shall be effected pursuant to §53.10 of this title [(relating to Designation as Supervisory Sale)].

### **§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 [the Texas Savings And Loan Act, Subchapter I, Article 852a]; [or]

(2) the commissioner has determined that the selling association is in an unsafe condition; or

(3) the primary federal regulator of the institution [Federal Home Loan Bank Board] 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; [or] is in imminent danger of insolvency; that the association has experienced [, or that there has been] 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; [or] 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; [or] 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 [Texas] Department of Savings and Mortgage Lending; or that the association is affected by any other conditions [affecting the association] 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 [or less]. In the event such office is not reopened within that timeframe [the allotted 12-month period], [such] authorization for that [the] office is [shall be] forfeited. Written notice of any temporary closing shall be furnished to the commissioner within 10 days of [such] closing, and no additional office shall be deemed to have reopened until the commissioner receives written notification of [such] 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 [had] been satisfied. An application under this section is subject to the same provisions and requirements as [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 domestic branch and loan offices, including provisions regarding timeframes, hearings, public notice and adjudication of the application [in this state]. The commissioner may not approve [such] an application unless the commissioner finds, based on the information [he shall have affirmatively found from the data] furnished with the application, [the] evidence adduced at the hearing, if applicable, and department [his official] 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) No Change.

(b) No Change.

(c) Each application [for such approval], or prior written notice provided to the commissioner under this section, [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 the terms thereof; estimates of the cost of removal to and maintenance of the new location; information regarding [whether] any affiliated parties [are] involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office, if applicable; evidence of the [association] board's approval of the relocation; and any other information as deemed necessary by the commissioner.

(d) No Change.

(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 [he shall have found from the data] furnished with the application, [the] evidence adduced at a [the] hearing, and information contained in department [his official] records and that all requirements of 7 Tex. Admin. Code §§53.4(1) - (7) have been met. [, all of the findings necessary for approval of a branch office.]

(f) This section does not apply to loan offices or administrative offices [set forth in] subject to §53.5 of this title [(relating to Loan Offices and Administrative Offices)].

### **§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 [to move an office location or for change of name 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].

### **§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 [he shall have found from the data] furnished with the application, [the] evidence adduced at a [the] hearing, and information contained in department [his official] 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 [approved] forms for [of] the application for office relocation or application for change of name. Copies of the applications may be obtained from the [Texas] 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] {This section to be repealed.}**

## **Chapter 61. Hearings**

### **§61.1 Hearings Officer**

Chapter 11 [31 of the Texas Banking Act, Title 3, Subtitle A] of the Texas Finance Code, provides that the Finance Commission may employ a hearings officer, who for purposes of [Texas Civil Statutes,] Texas Government Code, §2003.021, is an employee of the [Texas] 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 [(relating to Publication of Notice of Charter Application)] and §69.5 of this title [(relating to Publication)] 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 [said] 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 [(relating to Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision)] shall pay a fee of \$1,500 [\$2,500]. This fee shall be paid at the time of filing and shall include the cost of filing and processing of the [said] 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 [(Additional Offices)] 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 [said] 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 [said] 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 [per day] rate of \$325 for [each day during which] each examiner [is] 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].

**§63.6 Fee for Corporate Document Amendments [Charter and Bylaw Amendments]**

The commissioner shall collect a filing fee of \$100 for each amendment to a charter, certificate of formation, or [to the] bylaws of an association.

**§63.7 Fee for Permission To Issue Capital Obligations**

The commissioner shall collect a filing fee of \$1,000 [\$500] 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 [(relating to Fee for Reorganization, Merger, Acquisition, and Consolidation)] to cover the processing and investigation of such applications.

**§63.8 Annual Fees to do Business**

All associations chartered under the laws of this [the] 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 [savings and mortgage lending commissioner] 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 [(relating to Reorganization, Merger, and Consolidation)] 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 [(relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion)].

(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 [(relating to Fee for Charter and Bylaw Amendments)].

**[§63.10 Fee for Remote Service Unit Applications] {This section is proposed for repeal.}**

**§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 [(relating to Change of Control)] 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 [\$2,500] for each application by an association for permission to make an initial investment in a subsidiary corporation pursuant to Chapter 73 of this title [(relating to Subsidiary Corporations)] 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] {This section is proposed for repeal.}**

**§63.15 Fees for Public Information [Open Records] 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 [the Texas Open Records Act] 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. [as follows:]

[(1) \$.10 per page for readily available information which takes less than 15 minutes to obtain, with less than 50 pages of standard-size paper up to 8 inches by 14 inches;]

[(2) an additional \$15 per hour personnel charge for readily available information of 50 pages or more;]

[(3) \$.10 per page, plus \$15 per hour personnel charge, plus \$3.00 per hour overhead charge for any quantity of information that requires over 15 minutes to obtain and is therefore not readily available;]

[(4) \$.50 per minute if computer resources are required to obtain the requested information;]

[(5) actual postage and shipping charges

are added to all requests;]

[(6) \$.10 per page for a local facsimile transmission, \$.50 per page for a long distance facsimile transmission in the same area code, and \$1.00 per page for a long distance facsimile transmission in a different area code;]

[(7) nonstandard-size copies would consist of a diskette at \$2.00 each, an audio cassette at \$1.00 each, and paper larger than 8 inches by 14 inches at \$.50 per page;]

[(8) if certification is requested of any item, a charge of \$5.00 will be added to the total charges;]

[(9) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and]

[(10) a reasonable deposit may be required for requests where the total charges are over \$200.]

(b) All requests will be treated equally. Charges may be waived at the commissioner's discretion [The commissioner may waive charges at his discretion].

(c) No Change.

(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 [other directive].

(e) All public information [open records] 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 [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. 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 [such association 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 [exemplifications], or certified copy of the original record.

### **§64.4 Financial Statements; Annual Reports**

[(a) Before January 31 of each year, each

association shall submit a statement of condition (balance sheet) as of the last business day of December of the preceding year to the commissioner, upon a form to be prescribed and furnished by the commissioner.]

[(b)] Within 90 days of its fiscal year end, each saving association [savings bank] shall, regardless asset size, submit an independent audit of its financial statements and all correspondence reasonably related to the audit [annual written report of its affairs and operations] 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. [The report shall include a complete statement of its financial condition, including a balance sheet as of the last day of its fiscal year, and statements of income and expense, cash flows, and changes in its capital accounts for the 12 months ending on the last business day of its previous fiscal year. The report should be prepared on a comparative basis with the most recently completed prior fiscal year in accordance with generally accepted accounting principles including such notes to the financial statements as are necessary to make such statements not misleading. Every such report shall be signed by the president, and chief financial officer and sworn by them under oath to be complete and correct to the best of their knowledge and belief. Every association shall also make such other reports as the commissioner may from time to time require, which reports shall be in such form and filed on such dates as he may prescribe and shall, if required by him, be signed in the same manner as the annual report.]

### **§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) [set up by transfers from surplus or paid in capital].

### §64.7 Capital Requirements

#### (a) Definitions.

(1) Unless the context clearly indicates otherwise, when used in this chapter, “Capital” [Net worth, for purposes of these rules shall mean capital as noted herein. Capital] for an an [a capital stock] 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 [paid in surplus] 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.” [Capital for a mutual association shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the commissioner may approve in writing for inclusion as capital.]

[(3) Total liabilities shall mean total savings liability of an association, plus all amounts an association owes or which are payable by it or which it may be obligated to pay for any reason, including unapplied mortgage credits, dealer participation reserves, dealer hold-back reserves, all consignment

items, and all other liabilities.]

(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 [in] 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 [gives] regarding the association’s privacy practices [a consumer's right to privacy], regardless of whether it is required by a specific state or federal law to provide such notice or provided to consumers [given] voluntarily.

(2) No Change.

(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 [Texas] Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the [Texas] Department of Savings and Mortgage Lending through one of the following means: in person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294; by telephone or fax at the appropriate number provided in the "Contact Us" section of the department's website at [www.sml.texas.gov](http://www.sml.texas.gov); or via electronic submission provided in the "Consumer Complaints" section of the department's website. [as instructed in the Consumer Complaints section of the department's website at [www.sml.texas.gov](http://www.sml.texas.gov).]

(2) A required notice must be included in each privacy notice provided to consumers [that a savings and loan association sends out].

(3) A savings and loan association must provide consumers with the required notice in compliance with paragraph (1) of this section [Regardless of] whether or not the [a] savings and loan association is required by any state or federal law to provide [give] privacy notices to its consumers [, each savings and loan association 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) No Change.

(A) In each area where a savings and

loan association conducts business on a [face-to-face basis] with consumers in person, the required notice, in the form specified in paragraph (1) of this section [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 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 [For customers who are not given privacy notices], the savings and loan association must provide [give] the required notice when the customer relationship is established.

(C) No Change.

## **Chapter 65. Loans and Investments**

### **§65.1 Types of Loans, Letters of Credit, and Investments Authorized**

(a) No Change.

(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 [(relating to Residential Real Estate Loans)];

(2) commercial real estate loans, in accordance with §65.6 of this title [(relating to Commercial Real Estate Loans)];

(3) unimproved real estate loans, in accordance with §65.7 of this title [(relating to Unimproved Real Estate Loans)];

(4) personal property loans, in accordance with §65.8 of this title [(relating to Personal Property Loans)];

(14) No Change.

(5) oil and gas loans, in accordance with §65.9 of this title [(relating to Oil and Gas Loans)];

(15) No Change.

(6) wrap-around real estate loans, in accordance with §65.10 of this title [(relating to Wrap-Around Real Estate Loans)];

(c) No Change.

(d) No Change.

(7) loans to officers, directors, affiliated persons, or employees of the association, in accordance with §65.11 of this title [(relating to Loans to Officers, Directors, Affiliated Persons and Employees)];

(e) No Change.

(f) No Change.

(8) unsecured loans, in accordance with §65.12 of this title [(relating to Unsecured Loans)];

(g) An association may issue and honor letters of credit in accordance with §65.18 of this title [(relating to Letters of Credit)].

(h) An association may purchase the following types of investments:

(1) No Change.

(9) manufactured home loans, in accordance with §65.13 of this title [(relating to Manufactured Home Loans)];

(2) interests in real property, in accordance with §65.19 of this title [(relating to Investments in Real Property)];

(10) home improvement loans, in accordance with §65.14 of this title [(relating to Home Improvement Loans)];

(3) interests in deferred payment obligations, in accordance with §65.20 of this title [(relating to Investments in Deferred Payment Obligations)]; and

(11) acquisition, development and construction loans, in accordance with §65.15 [§ 65.15] of this title [(relating to Acquisition, Development, and Construction Loans)]; and

(4) interests in securities, in accordance with §65.21 of this title [(relating to Investments in Securities)].

(i) No Change.

(12) interim construction loans, in accordance with §65.16 of this title [(relating to Interim Construction Loans)];

**§65.2 Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein**

(13) without regard to any loan limitations or restrictions otherwise imposed by this chapter other than §65.17 of this title [(relating to Loan Documentation)], 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;

(a) Any loan, investment, or letter of credit, or legally binding commitment thereof [therefor], 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) No Change.

(2) No Change.

(b) No Change.

(c) No Change.

### **§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~~ [Either loans to] finance the acquisition of unimproved land and its development [the development of such land] by the installation of utilities, streets, and other similar infrastructure [such other amenities] necessary for commercial or residential development; [so that structures which would qualify the land as commercial or residential real estate may be built thereon] 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 [his] spouse and the members of their [his] immediate family, owns an interest of 10% or more in the partnership (based on the value of their [his] 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 [his] spouse and the members of their [his] 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 [his] immediate family has such association or a member of their [his] immediate family has a substantial beneficial interest or as to which such person or their [his] 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 [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 [on which] structures primarily used for commercial purposes [or improvements which do not qualify the property as residential real estate are located].

(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 [his] 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) No Change.

(7) No Change.

(8) No Change.

(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 [Whether by the full or half blood or by adoption, such person's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers, and sisters of such person's spouse; and the spouse of a child, brother, or sister of such person].

(10) Interim construction loans--Loans made to finance the construction or 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 §65.14 of this title [(relating to Home Improvement Loans)].

(11) Loans--For purposes of limitations on loans to One Borrower [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 [, which

in the traveling mode is] eight body feet or more in width or forty body feet or more in length, or when erected on site, measures [is] 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 [the] required utilities, and includes the plumbing, heating, air conditioning, and electrical systems of such structure.

(13) No Change.

(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 [article of incorporation] or bylaws authorize the chairman to participate in the operating management of the association or [if] the chairman actually [in fact] participates in such management.

(15) One Borrower [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 [his] 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 [Texas] 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 [(relating to Commercial Real Estate Loans; Unimproved Real Estate Loans; Acquisition, Development, and Construction Loans; and Interim Construction Loans)], 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 [on which] a house, a home, or an apartment house [is located].

(19) Subsidiary--A subsidiary of an association shall have the meaning prescribed in §73.1 of this title [(relating to Subsidiary Corporations)].

(20) No Change.

(21) Wrap-around real estate loan--A financing arrangement [device] 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 [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)). [, in the aggregate, exceed \$75,000, or the association's net worth as defined in Chapter 64 of this title (relating to Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth), whichever is greater.] More restrictive limitations on loans to One Borrower [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 [loans or purchase participations in loans] secured by a first [and prior] 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 [in the maximum amount of] 90% of the appraised value of the underlying collateral, or 95% of appraised value if the underlying collateral is the borrowers principal residence. [security property, (unless the security property is designated as the borrower's principal residence, in which case the loan may be in the amount of 95% of the appraised value of the security property) or if the loan is for the purchase of the property, the purchase price plus the cost of any improvements included in

the subject loan if less than 90% of the appraised value (or 95% of the appraised value if the security property is designated as the borrower's principal residence), 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 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 [open ended] future advances under the first lien agreement to which the security interest in the collateral [security property] is subject, other than disbursements authorized under the Texas Savings and Loan Act, §64.061.

(c) No Change.

(d) Residential real estate loans may provide for variable interest rates, under the following conditions [so long as the following provisions are met]:

- (1) No Change.
- (2) No Change.

(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 [security], 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) No Change.

(2) No Change.

(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) No Change.

(B) monthly payments for years six through nine [six-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) No Change.

(f) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [(relating to Loan Documentation)].

(g) Notwithstanding any provision of this chapter to the contrary, an association may make purchase money loans to facilitate the sale [by it] 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 [which loans shall be secured by the real property sold, shall be in accordance] with all [otherwise] applicable lending rules and regulations, and the transaction is [shall be] 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 [purchase participations] may make other loans or participate in loans secured by a first [and prior] lien on commercial real estate, in an amount not to exceed the lesser [the maximum amount] of 90% of the appraised value of the underlying collateral, or 90% of [security property or if the loan is for the purchase of the property,] the purchase price on a purchase money loan [, if less than 90% of 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 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 [open ended] future advances under the first lien agreement to which the security interest in the collateral [property] 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 [(relating to Residential Real Estate Loans)], 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 [shall be] 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 [security property] has generated break-even [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) [of this title (relating to Loan Documentation)].

(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 [and prior] lien on unimproved real estate, in the amount of 90% of the appraised value of the underlying collateral [security property], 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 [prior] lien, the second lien shall not be inferior to any open ended future advances under the first lien agreement to which the underlying collateral [security property] 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 [(relating to Residential Real Estate Loans)], 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 [security property]. 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 [(relating to Loan Documentation)].

**§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 [security property], 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) Repealed. [The aggregate amount of any such loans to one borrower shall not exceed \$100,000 or 15% of the association's net worth, whichever is greater.]

(c) No Change.

(d) A loan made under this section may include add-on interest as authorized by the Texas Credit Title [Code, Title 4] of the Finance Code.

(e) 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 [security property]. Any amount of the loan which represents interest shall not be disbursed until earned.

(f) 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.

(g) 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 [(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.

**§65.9 Oil and Gas Loans**

(a) An association may make loans or purchase participations in loans secured by a first [and prior] 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% [90%] 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 [one borrower] shall not exceed [\$100,000 or] 10% of the association's net worth[, whichever is greater].

(c) No Change.

(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% [80%] of the appraised value of

the underlying collateral [security property]. 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 [(relating to Loan Documentation)].

(f) No other provision of this chapter other than §65.1(a) of this title [(relating to Types of Loans, Letters of Credit, and Investments Authorized)] or §65.12 of this title [(relating to Unsecured Loans)] 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 [on which there exist] prior liens;

(2) No Change.

(3) No Change.

(4) prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [(relating to Loan Documentation)] . 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 [computing loan-to-one-borrower] 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. [(a) Neither an association nor any subsidiary of an association may make or purchase any loan to any affiliated person, or to any employee of the association or any subsidiary of the association, except as follows:]

[(1) loans fully secured by the principal residence of the affiliated person or employee;]

[(2) loans fully secured by savings accounts maintained by the affiliated person or the employee at the association;]

[(3) home improvement loans for the borrower's principal residence;]

[(4) loans in connection with overdraft protection and extensions of consumer credit in connection with credit cards as authorized by §67.16 of this title (relating to Overdraft Protection--Credit and Debit Cards); and]

[(5) personal property loans to finance the purchase of consumer goods.]

[(b) All loans made or purchased pursuant to subsection (a) of this section must comply with the following terms.]

[(1) Prior to funding, the loan must be

approved by a resolution duly adopted, at a duly constituted meeting, and after full disclosure, by a majority of the entire board of directors of the association, with no director having an interest in the transaction voting. Full disclosure shall include all terms and conditions of the loan and all facts and circumstances reasonably pertinent thereto.]

[(2) The loan shall be at an interest rate not less than the association's current cost of funds (except that in the case of a loan secured by a savings account, the interest rate shall be at least 1.0% above the rate of return on the savings account), and shall be on terms no more favorable to the borrower than if the borrower were not an affiliated person or employee of the association, and shall not exceed the loan amount which would be available to members of the general public of similar credit status applying for a similar type of loan.]

[(3) With respect to any loan authorized by this section made to a salaried officer or employee of the association or a subsidiary of the association, the approval requirement of subsection (b)(1) of this section shall be satisfied if the loan conforms with a blanket preapproval resolution of the board of directors specifying the terms on which loans may be made to all officers or employees, or a class of such officers or employees, and the loan documents set forth the association's current cost of funds. An institution may not use a blanket preapproval resolution to make loans authorized by this section to a single officer or employee in excess of \$50,000 in the aggregate.]

[(c) Prior to funding a loan under this section, an association shall comply with the loan documentation requirements of this chapter as applicable to the type of loan in question.]

[(d) All loans shall fully comply with the applicable provisions of this chapter.]

[(e) Neither an association nor any subsidiary of an association shall engage in any transaction with any affiliated person involving the purchase, sale, or lease of property or assets, without the prior written approval of the commissioner.]

#### **§65.12 Unsecured Loans**

(a) An association may make unsecured loans or participate [purchase participations] in unsecured loans, provided that the aggregate amount of such unsecured loans to One Borrower [one borrower] shall not exceed \$50,000 or 10% of the association's net worth, whichever is greater.

(b) No Change.

(c) No Change.

(d) No Change.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(b) of this title [(relating to Loan Documentation)].

(f) No Change.

#### **§65.13 Manufactured Home Loans**

(a) An association may make or participate [purchase participations] 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 [security property], 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 [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 [loan] to One Borrower [one borrower limitation] shall apply to each such maker.

(c) No Change.

(d) No Change.

(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 [security property], and the source of funds which will be used to repay the loan;

(2) No Change.

(3) No Change.

(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 [applicable loan-to-one-borrower limitations are] met;

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) if [security for] the loan is collateralized by real estate, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq. [a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the association, who are on a list of appraisers approved by the board of directors, in writing and in a form approved by the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. 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].

#### **§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 [security property].

(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 [(relating to

Residential Real Estate Loans)].

(c) 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) No Change.

(2) No Change.

(3) No Change.

(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 [applicable loan-to-one-borrower limitations are] met;

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) for all loans covered under this section, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq. [of \$50,000 or more, a written appraisal report by an appraiser or committee of appraisers, who may be employees of the association, who are on a list of appraisers approved by the board of directors and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Corporation. The appraisal report shall be signed by the appraiser or committee of appraisers];

(11) Repealed [a written opinion of value, with picture of property, by an appraiser appointed by the board of directors on all home improvement loans under \$50,000].

(d) No Change.

(e) No Change.

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title [Code, Title 4] 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 [security property]. 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 [and prior] lien on the real estate acquired and all structures and improvements to be constructed thereon under the loan agreement.

(b) No Change.

(c) No Change.

(d) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [(relating to Loan Documentation)].

(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 [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 [security property] has generated break-even [break even] income. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(f) No Change.

**§65.16 Interim Construction Loans**

(a) An association may make or participate [purchase participations] in interim construction loans to finance the construction or improvement of residential or commercial structures when the loans are secured by a first lien [and prior liens] on the real estate and all structures and improvements to be constructed thereon under the loan agreement.

(b) No Change.

(c) No Change.

(d) Prior to funding a loan under this section, an association shall comply with the

requirements of §65.17(a) of this title [(relating to Loan Documentation)].

(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 [security property]. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(f) No Change.

**§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 [security property], and the source of funds which will be used to repay the loan;

(2) No Change.

(3) No Change.

(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 [loan-to-one-borrower limitations] are met;

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) for real estate loans, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq. [or oil and gas or mineral loans in which the transaction value exceeds \$250,000, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the association is required. An oil and gas or mineral appraisal may be performed by a professional engineer certified as to the mineral in question. Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the association, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or in the case of an appraisal of oil and gas or other minerals, the applicable society of engineers certified as to the mineral in question, and shall be signed by the appraiser or committee of appraisers. In case of renewal of a loan where additional funds are advanced by the association, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this subsection];

(12) for personal property loans, a detailed explanation of how the association arrived at the appraised or market value of the underlying collateral [security property];

(13) No Change.

(14) any documents required by the Texas Credit Title [Code, Title 4] of the Finance Code.

(b) Repealed [Smaller loans in an amount less than \$50,000 would generally be expected to meet more limited documentation guidelines of subsection (a)(1)-(8) of this section and of §65.14(c)(8), (9), and (11) of this title (relating to Home Improvement Loans). Further, §65.13(e) of this title (relating to Manufactured Home Loans) and §65.14(c) provide additional documentation guidelines for making home improvement or manufactured housing loans].

(c) No Change.

(d) 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 [, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing Administration, or Farmer's Home Administration].

(e) No Change.

(f) No Change.

(g) No Change.

(h) No Change.

#### **§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 [1983] Revision, ICC Publication Number 600 [400],

and in conformity with the following conditions:

(1) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(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 [computing loan limitations to one borrower];

(7) No Change.

(8) No Change.

#### **§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) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(6) If the commissioner finds that an association has abused or is abusing the authority granted in this section, the commissioner [he] may, by using personal [at his] discretion, deny such association the right to future exercise thereof until such abuse or abuses have been corrected.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) Real estate acquired in satisfaction or partial satisfaction of debt [indebtedness], 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) No Change.

(13) No Change.

(14) No Change.

(15) No Change.

**§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) No Change.

(2) as to any obligation arising under the Consumer Credit Title [Code, Subtitle B of Title 4] 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 [Code], the requirements of that title [the Code] have been fully met;

(4) No Change.

(5) No Change.

(6) No Change.

**[§65.22 Restriction on Loan Procurement Fees] {This section proposed for repeal.}**

**§65.23 Restrictions on Loan Transactions with Third Person**

(a) No Change.

(b) The restriction contained in this section may be waived by the commissioner if the commissioner [he] 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 [regular] 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, [the same] as if such withdrawals had been [were] 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 [from] 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]**

**{This section is proposed for repeal.}**

**§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 [on the following terms. The] 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 [intact as much as] 90 days, and the association agrees to pay dividends or earnings on said account at a rate higher than the regular savings account [passbook] rate. An association may adopt procedures [procedure] providing for waiver of the notice for withdrawal from such account on an emergency basis.

**§67.8 Deposit Accounts**

(a) No Change.

(b) In connection with various types of deposit accounts the form of certificates and/or savings accounts [or passbooks] to be used shall be submitted to the savings and mortgage lending commissioner for review [approval].

(c) In the event that an association adopts and

becomes a deposit institution as provided for in this section, then [in such event] it may continue to maintain its [theretofore] 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 [(relating to Provisions for Issuance of Secured or Unsecured Capital Obligations)], 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 [it meets] 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 [operating without insurance of] accounts not insured by [with] 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 [within] the limitations provided elsewhere in this chapter.

#### **§67.12 NOW [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 [deposit type] association [whose bylaws contain the priority provision authorized by §65.012 of the Texas Savings and Loan Act.] 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] {This section is proposed for repeal.}**

#### **§67.15 Noninterest-Bearing Deposit Accounts**

Any [deposit-type] association [whose bylaws contain the priority provision authorized by §65.012 of the Texas Savings and Loan Act.] 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 [as defined] in that section [the Finance Code].

(b) No Change.

(c) No Change.

(d) Safety evaluations.

(1) No Change.

(2) The safety evaluation shall consider at a minimum [the least] the factors identified in the Finance Code, §59.308.

(3) No Change.

(e) No Change.

(f) No Change.

(g) No Change.

(h) No Change.

## **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 [association by a majority of the total vote the] members or shareholders [of each are] 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 [largest applying association] 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 [be] 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 [in making] application. After the application has been filed, the commissioner may conduct [make or cause to be made] 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 [the associations involved and those] 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 [he] shall enter an order approving the application [plan].

### **§69.5 Publication**

The associations involved in an application [a plan] 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[, Texas Civil Statutes, Article 852a]. 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 [Texas Civil Statutes, Article 852a]. [The particular sections of the statute involved are §§62.011, 62.351, and Chapter 61. The particular rules involved are §69.8 and §69.9. Such rules are on file with the Secretary of State, Texas Register Division, or may be seen at the department's offices, 2601 North Lamar Boulevard, Suite 201, Austin, Texas]. 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 [his] decision on an application under this chapter within 60 days of [after] 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 [in the] public interest, considering the likelihood of meeting the [by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and] needs of the community to be served;

(2) No Change.

(3) No Change.

(4) No Change.

(5) after reorganization, merger, or consolidation the surviving entity would not be solvent, [have adequate capital structure] 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 [reasonable] requested by the commissioner; or

(7) No Change.

(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[, Texas Civil Statutes, Article 852a].

**§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 [(relating to Filing of Plan; Form and Content of Application; Use of Approved Forms; Notice and Hearing; Publication; Time of Decision; and Denial and Appeal)], shall not be applicable, and the merger shall be effected pursuant to the Texas Savings and Loan Act, §62.051[, Texas Civil Statutes, Article 852a].

**§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[, Article 852a]; or

(2) the commissioner has determined that one or more of the associations subject to the Savings and Loan [this] 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 [the] association [(or associations)] 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 [the] 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 [the] 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 [the] association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of an [the] association by the commissioner or other duly authorized personnel of the [Texas] Department of Savings and Mortgage Lending; or any other condition affecting an [the] 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 [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 that apply to a [for a] similar application involving another association in this state apply to an application under this section. The commissioner shall approve [such] an application under this section if the commissioner finds, [he shall

have affirmatively found] from the data furnished with the application, the evidence adduced at the hearing, and the department records [his official] 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 [in question] have been met.

### **§69.11 Conversion into Another Financial Institution Charter**

(a) No Change.

(b) No Change.

(c) The commissioner may approve a conversion if the commissioner [he] finds that:

(1) the conversion will not substantially lessen competition or restrain [be in restraint of] 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 [in the] public interest considering the likelihood of the result meeting [by the probable effect of the conversion in meeting the convenience and] needs of the community to be served;

(2) No Change.

(3) the proposed conversion is not contrary to the best interests of the customers [savers, depositors], 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 [the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a], 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 [the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a], 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 [should refuse the conversion sought].

(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 [the] laws [of this state or the United States] 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[, provided that no]. 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 Section of the Finance Commission of Texas and] 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) No Change.

(2) Affiliated person--The term "affiliated person" of an association means the following:

(A) No Change.

(B) No Change.

(C) No Change.

(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) No Change.

(ii) No Change.

(iii) is a limited partner who, directly or indirectly, either alone or with their [his] spouse and the members of their [his] 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 [his] 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 [his] spouse and the members of their [his] 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 [his] 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 [a person, whether through the ownership of voting securities by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person]. 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 [or authority] of any association [other person]. 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) No Change.

(7) No Change.

(8) No Change.

**§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 [(relating to Fee for Change of Control)], 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) No Change.

(ii) No Change.

(iii) No Change.

(iv) No Change.

(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 [court location], 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) No Change.

(C) No Change.

(D) No Change.

(E) No Change.

(F) No Change.

(G) No Change.

(H) No Change.

(I) No Change.

(J) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(5) Amendments. If any material change occurs in the facts set forth in the application and any documents filed with the [Texas]

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 [such] hearing on a denied application shall be instituted by the applicant's filing a written petition for hearing before the 31st day [within 15 days] after the notice of intent to deny is mailed to the proposed transferee [date of the commissioner's order denying the application for acquisition of control or within 30 days after the date upon which the application was filed, whichever date is later].

(c) No Change.

(d) No Change.

(e) No Change.

(f) No Change.

#### **§71.5 Retention of Control**

(a) No Change.

(b) The commissioner may require the submission of such information as deemed [he deems] 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 [he] 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 [which he deems] 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 [Texas Department of Savings and Mortgage Lending], 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 [a savings and loan] 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 [section]:

(1) No Change.

(2) No Change.

(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 [proceeding] 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) No Change.

(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 [he] finds that:

(1) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(c) If the commissioner finds that an association has abused or is abusing the

authority granted in this chapter, the commissioner [he] 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) No Change.

(e) No Change.

### **§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 [information]:

(1) No Change.

(2) No Change.

(3) a certified copy of the [articles of incorporation,] certificate of formation [incorporation], and bylaws of the corporation;

(4) No Change.

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) No Change.

(b) No Change.

(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 [Texas] 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) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) No Change.

(12) No Change.

(13) No Change.

(14) No Change.

(15) No Change.

(b) No Change.

(c) No Change.

(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 [documents] shall be made available at all times to state and federal supervisory authorities for examination and review.

#### **§73.4 Operations**

(a) No Change.

(b) No Change.

(c) No Change.

(d) Each corporation shall maintain fidelity bond coverage with an acceptable bonding company in an amount that [to] adequately protects the corporation from loss [cover each director, officer, employee, and agent who has access to cash or securities of the corporation]. Coverage as an additional insured entity under a fidelity bond of the parent [Such bond amount shall be in an amount equivalent to 1.0% of total assets but in no event shall be less than \$25,000 nor more than \$2 million. In lieu of a separate surety bond for the corporation, the] association or its holding company may satisfy this requirement [obtain an extension rider to the surety bond coverage of the parent association].

(e) All joint ventures and partnership agreements shall be reviewed by the attorney for the corporation who shall render their [his] opinion to the commissioner stating the obligation and responsibility of the corporation, as well as the parent association.

(f) No Change.

(g) No Change.

#### **§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 [(relating to investment in Debt Limitation)]. 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

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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.

**PURPOSE:** The purpose of the proposed amendment 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 proposed to for gender neutrality, to streamline the application process by making hearings contingent on the receipt of a protest to an application. Section 75.4 is redundant with Tex. Fin. Code §91.004 and is thus proposed for repeal. 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. 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. Amendments to Chapter 75, Subchapter E, are proposed to provide gender neutral references. Amendments to Chapter 76, Subchapter A, are proposed to 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 proposed 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 proposed to addresses the use of a hearings officer for state savings bank matters. The proposed amendments eliminate unnecessary words in reference to applicable statutes and correct agency names. Amendments to Chapter 76, Subchapter F, are proposed to include clarifying language and a replacement of public information fees with reference to those set by the Texas Attorney General. Amendments to Chapter 76, Subchapter H, Section 76.122 are proposed to address consumer complaint procedures relating to state savings banks. The proposed amendments correct the name of the Department and replace specific contact information with reference to the Department's website. Amendments to Chapter 77, Subchapter A, are proposed 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 proposed to address the pledging of state savings bank assets to secure deposits. The proposed amendments make state savings bank powers consistent with those of other types of charters.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments and repeal in 7 TAC, Chapters 75-77 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed 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, proposes to amend 7 Texas Administrative Code: Chapter 75, concerning Applications; Chapter 76, concerning Miscellaneous; and Chapter 77, concerning Loans, Investments, Savings and Deposits.

In general, the purpose of the proposal 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 proposed 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 proposed 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 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 amendments make references to the Commissioner gender neutral.

Section 75.3 addresses the public notice of a state savings bank charter application. The proposed amendments streamline the

application process by tying the publication to the application rather than a hearing, which may not be required as proposed in the amendments to §75.2. An additional 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 and is therefore proposed for repeal. Repeal removes the possibility of conflicts between the regulation and statute.

Section 75.5 addresses the proof of publication of a state savings bank charter application as required by §75.3. The proposed amendments again streamline the application process by tying the publication to the application rather than a hearing, which may not be required as proposed 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 proposed amendments streamline the application process by tying the decision to the application rather than a hearing, which may not be required as proposed 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 proposed amendment makes a reference to the Commissioner gender neutral.

In Chapter 75, Subchapter C, the proposed 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 proposed 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 proposed 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 proposed amendment updates one accounting term from “net worth” to “capital.”

Section 75.38 addresses location changes for state savings bank offices. The proposed 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 proposed amendments make references to the Commissioner gender neutral and remove the duplication of text.

In Chapter 75, Subchapter D, the proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed amendment updates terms used.

In Chapter 75, Subchapter E, the proposed amendments are limited to gender

neutralization.

In Chapter 76, Subchapter A, the proposed 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 proposed 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 proposed amendment updates those forms to explicitly include electronic records.

Section 76.4 sets requirements for annual financial audits for state savings banks. The proposed 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 proposed 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 proposed amendment updates references to applicable statutes and removes unnecessary words.

In Chapter 76, Subchapter B, the proposed 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. Proposed 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 proposed 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.

In Chapter 76, Subchapter E, section 76.21 addresses the use of a hearings officer for state savings bank matters. The proposed amendments eliminate unnecessary words in reference to applicable statutes and correct agency names.

In Chapter 76, Subchapter F, the proposed 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 proposed amendments provide clarifying language.

Section 76.98 describes the annual assessment fee required for a state savings bank to do business in Texas. The proposed amendments provide clarifying language.

Section 76.99 sets the fees for a state savings bank to reorganize, merge, and/or consolidate. The proposed 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 proposed

amendments replace specific fees with reference to the fees adopted by rules of the Texas Attorney General.

In Chapter 76, Subchapter H, Section 76.122 addresses consumer complaint procedures relating to state savings banks. The proposed amendments correct the name of the Department and replace specific contact information with reference to the Department's website.

In Chapter 77, Subchapter A, the proposed 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 proposed 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 proposed 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 proposed 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 proposed amendment clarifies a statutory reference.

Section 77.31 addresses general loan policies and documentation for state savings banks. The proposed 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 proposed amendment enhances consistency with federal regulations.

Section 77.35 establishes definitions for use in this chapter. The proposed 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 proposed amendment clarifies the applicability of limits on loans to One Borrower.

Section 77.71 addresses state savings bank security investments. The proposed amendments update federal agency references.

Section 77.91 addresses state savings bank subsidiary investments. The proposed amendments make references to the Commissioner gender neutral.

Section 77.94 addresses operations of state savings bank subsidiaries. The proposed 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 proposed amendments make state savings bank powers consistent with those of other types of charters.

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](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

The amendments are proposed 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 proposed 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.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91-98 and 119.

<Rules>

## **Chapter 75. Applications**

### **Subchapter A. Charter Applications**

#### **§75.1 Application for Permission to Organize a State Savings Bank**

(a) No Change.

(b) No Change.

(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 [he] has received satisfactory proof [satisfactory to him] that the amounts of capital stock and additional paid-in capital [surplus], 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 [he] 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 [a complete application has been accepted for filing], the commissioner shall set a date for a hearing on the application, which date shall not be more than 60 [90] 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. [application is accepted for filing. A decision to approve or deny the application will be rendered in accordance with the timetable set out in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).]

(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 [in his] discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner [he] desires to base a [his] decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner [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) 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

[no less than 10 days prior to the date of the hearing]. Any amendment filed thereafter [fewer than 10 days prior to the date of the hearing] shall be accepted only at the discretion of the commissioner. [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] The commissioner may require additional publication of the amendment to the application [date of such hearing shall be required].

### **§75.3 Publication of Notice of Charter Application**

Within 15 [At least 20] days of receipt of the notice issued pursuant to §75.9 of this chapter [before the date of the hearing], 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]  
{This section is proposed for repeal.}**

### **§75.5 Filing of Proof of Publication**

Within [At least] 10 days of publication [before the hearing date], the proposed incorporators shall file proof of publication in the manner provided in §75.3 of this title [(relating to Publication of Notice of Charter Application)] 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. 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].

**§75.6 Time of Decision on Charter Application**

The commissioner shall render a [his] decision within 30 [60] calendar days after the final ruling is issued [date the hearing is finally closed] if the hearing was held in accordance with §75.2 of this title [(relating to Hearing on Charter Application)], or 30 calendar days after the date the application is deemed substantially complete if [on which] 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 [he shall have found] from the data furnished with the application, the evidence adduced at the hearing, and department [his official] 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 [his sole] discretion set the application for hearing to consider the facts or obtain additional information.

**Subchapter B. Expedited Applications**

No Change.

**Subchapter C. Additional Offices**

**§75.33 Branch Office Applications**

(a) No Change.

(b) No Change.

(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 [his official] records that:

(1) No Change.

(2) No Change.

(3) No Change.

(d) No Change.

(e) No Change.

**§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 [his official] records, all of the findings necessary for approval of a branch office.

(b) Mobile facilities must be operated consistent with the following requirements:

(1) No Change.

(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 [his] 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) No Change.

(2) No Change.

(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 [net worth]; 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) No Change.

**§75.38 Change of Home or Branch Office Location**

(a) No Change.

(b) No Change.

(c) No Change.

(d) No Change.

(e) The commissioner may not approve an application to move or relocate any office of a savings bank, unless the commissioner finds [he shall have found] from the data furnished with the application, the evidence adduced at the hearing, and department [his official] 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 [he shall have affirmatively found] from the data furnished with the application, the evidence adduced at the hearing, if applicable, and department [his official] 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. [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 he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, if applicable, and his official 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. [to be heard within 90 days of filing. Notice will be sent by mail to the institution involved and those savings and loan associations and savings banks with offices in the same counties as any of the offices of the applying savings bank. 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 Bank Act are met, he shall enter an order approving the plan.]

##### **§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. [The institutions involved in a plan must publish a notice at least 20 days before the date of hearing in a

newspaper or newspapers of general circulation in each county or counties where said institutions 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.

Attached Graphic.]

#### **§75.85 Time of Decision**

The commissioner shall render a [his] decision in the same manner and within the time as provided in this chapter for new charter applications [within 60 days after the date the hearing is closed.]

#### **§75.86 Appeal**

Any appeal of an order or action of the commissioner shall be made pursuant Chapter 2001 of the Texas Government Code [to the Administrative Procedure and Texas Register Act, §16 (Texas Civil Statutes, Article 6252-13a)], and the Texas Savings Bank Act, §§91.004-91.006.

#### **§75.87 Designation as and Exemption for Supervisory Merger**

(a) No Change.

(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 [net worth]; 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) No Change.

#### **§75.88 Acquisitions Involving Financial Institutions [Savings Banks] 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 [he shall have affirmatively found] from the data furnished with the application, the evidence adduced at the hearing, and department [his official] 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) No Change.
- (b) No Change.
- (c) No Change.
- (d) An applicant is entitled to a hearing under the Chapter 2001 of the Texas Government Code [Administrative Procedure and Texas Register Act] 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) No Change.
- (b) No Change.
- (c) No Change.
- (d) No Change.
- (e) No Change.
- (f) No Change.
- (g) No Change.
- (h) No Change.

(i) The converting savings bank shall pay interest at not less than the savings account interest [passbook] 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) No Change.
- (k) No Change.
- (l) No Change.

**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) No Change.
- (2) Affiliated person--
  - (A) No Change.
  - (B) No Change.
  - (C) No Change.

(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) No Change.
- (ii) No Change.
- (iii) is a limited partner who,

directly or indirectly, either alone or with their [his] spouse and the members of their [his] 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 [his] 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 [his] spouse and the members of their [his] 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 [his] spouse serves as trustee or in a similar fiduciary capacity.

(3) No Change.

(4) No Change.

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

**§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 Change.

(2) No Change.

(3) No Change.

(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 [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 a savings bank if the commissioner [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 or the savings bank industry in any part of the state, unless the commissioner [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) No Change.

(C) No Change.

(D) No Change.

(E) No Change.

(F) No Change.

(G) No Change.

(H) No Change.

(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 [at his] discretion, set and hold a hearing on an application for acquisition of control of a savings bank if the commissioner [he] 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) No Change.

(c) No Change.

(d) No Change.

(e) No Change.

(f) No Change.

### **§75.124 Retention of Control**

(a) No Change.

(b) The commissioner may require the submission of such information as [he deems] 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 [he] 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 [which he] deems appropriate.

## **Chapter 76. Miscellaneous**

### **Subchapter A. Books, Records, Accounting Practices, Financial Statements and Reserves**

#### **§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**

[(a)] For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank, regardless of asset size, is required to submit [have] 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 [Code of Federal Regulations Part 363 Federal Deposit Insurance Corporation Regulations regarding annual independent audits and reporting requirements are incorporated herein], with the exception of any matters specifically addressed by this section, the Act, or its related rules.

[(b)] A copy of the independent audit and all correspondence reasonably related to the audit shall be provided to the Commissioner upon completion.]

**§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 (GAAP) [set up by transfers from surplus or paid in capital].

**§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 [Corporation Act, the Texas Miscellaneous Corporation Laws Act], and other applicable laws, rules and regulations, or [the association's] 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 [Miscellaneous Corporation Laws Act, Article 1302-7.06] 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) No Change.

**Subchapter B. Capital and Capital**

## Obligations

### §76.21 Capital Requirements

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

[(1)] Unless the context clearly indicates otherwise, when used in this chapter, “Capital” [Capital] for a [capital stock] savings bank[--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 savings bank's capital under Generally Accepted Accounting Principles) plus any retained earnings and additional paid-in capital [paid in surplus] as well as such other items as the commissioner may approve in writing for inclusion as capital.

[(2)] Capital for a mutual association--Shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the commissioner may approve in writing for inclusion as capital.]

[(3)] Total liabilities--Shall mean total savings liability of a savings bank, plus all amounts the savings bank owes or which are payable by it or which it may be obligated to pay for any reason, including unapplied mortgage credits, dealer participation reserves, dealer hold-back reserves, all consignment items, and all other liabilities.]

(b) Minimum capital requirement. Each savings bank [association] 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 [an association] 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 [association's] failure to meet the minimum capital [net worth] requirement is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank [association], a violation of any provision of the articles of incorporation or bylaws of the savings bank [association], or a violation of any law, rule, or supervisory order applicable to the savings bank [association] or any condition that the commissioner has imposed on the savings bank [association] 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 [an association], 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 [association] 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 [association] is well managed. In determining whether the applying savings bank [association] is well managed, the commissioner may consider:

(A) management's record of operating the savings bank [association];

(B) No Change.

(C) No Change.

(D) management's ability to operate the savings bank [association] 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 [association'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 [(relating to Loans, Investments, Savings, and Deposits)]. 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 [net worth] 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) No Change.

(c) No Change.

(d) No Change.

#### **Subchapter C. Holding Companies**

No Change.

#### **Subchapter D. Foreign Savings Banks**

No Change.

#### **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 [Texas Civil Statutes,] Government Code, §2003.21, is an employee of the [Texas] 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 [association] subject to a special examination shall pay to the department [commissioner] an examination fee based upon a daily [per day] rate of \$325 for [each day during which] each examiner [is] 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 [commissioner] 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 [association] 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 [association] seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.88 of this title [(relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition)] 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) No Change.

**§76.108 Fees for Public Information [Open Records] 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 [the Texas Open Records Act] shall in accordance with Texas Government Code §552.262, be those adopted

by rules of the attorney general [as follows:]

[(1) \$.10 per page for readily available information which takes less than 15 minutes to obtain, with less than 50 pages of standard-size paper up to 8 inches by 14 inches;]

[(2) an additional \$15 per hour personnel charge for readily available information of 50 pages or more;]

[(3) \$.10 per page, plus \$15 per hour personnel charge, plus \$3.00 per hour overhead charge for any quantity of information that requires over 15 minutes to obtain and is therefore not readily available;]

[(4) \$.50 per minute if computer resources are required to obtain the requested information;]

[(5) actual postage and shipping charges are added to all requests;]

[(6) \$.10 per page for a local facsimile transmission, \$.50 per page for a long distance facsimile transmission in the same area code, and \$1.00 per page for a long distance facsimile transmission in a different area code;]

[(7) nonstandard-size copies would consist of a diskette at \$2.00 each, an audio cassette at \$1.00 each, and paper larger than 8 inches by 14 inches at \$.50 per page;]

[(8) if certification is requested of any item, a charge of \$5.00 will be added to the total charges;]

[(9) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and]

[(10) a reasonable deposit may be required for requests where the total charges are over \$200.]

(b) All requests will be treated equally. Charges may be waived at the commissioner's discretion [The commissioner may waive charges at his discretion].

(c) No Change.

(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 [other directive].

(e) All public information [open records] requests will be referred to the commissioner's designee before the department will release the information.

**Subchapter G. Statements of Policy**

No Change.

**Subchapter H. Consumer Complaint Procedures**

**§76.122 Consumer Complaint Procedures**

(a) No Change.

(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 [Texas] Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the [Texas] Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, by telephone or fax at the appropriate number provided at the department's website at

www.sml.texas.gov [Telephone No.: (877) 276-5550, Fax No.: (512) 475-1505], or via electronic submission on the department's [Department's] website at http://www.sml.texas.gov/consumerinformation/tdsml\_consumer\_complaints.html.

(2) No Change.

(3) No Change.

(4) No Change.

**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 [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) No Change.

(b) No Change.

(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) No Change.

(2) No Change.

(3) No Change.

(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. [of \$50,000 or more, a written appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, and in a form approved by the Appraisal Institute, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Corporation. The appraisal report shall be signed by the appraiser or committee of appraisers. For all loans under \$50,000, a written opinion of value, with picture of property, by an appraiser or a real estate broker, who may be an employee of the savings bank, shall be required.]

(d) No Change.

(e) No Change.

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title [Code, Title 4] of the Finance Code.

(g) No Change.

#### **§77.5 Manufactured Home Loans**

(a) No Change.

(b) No Change.

(c) No Change.

(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) No Change.

(2) No Change.

(3) No Change.

(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. [a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, in writing and in a form approved by the Appraisal Institute, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. 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.]

#### **§77.8 Personal Property Loans**

(a) No Change.

(b) Loans made under this section may include add-on interest as authorized by the Texas Credit Title [Code, Title 4] of the Finance Code.

(c) No Change.

(d) No Change.

#### **§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 [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 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 [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 security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their [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 the purchase of the security for

the loan;

(3) No Change.

(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 [loan-to-one-borrower limitations] 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 [his] completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq. [for real estate loans in which the transaction value exceeds \$250,000, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, is required. Reappraisals may be

required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the savings bank, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage corporation, the Federal National Mortgage Corporation and shall be signed by the appraiser or committee of appraisers. In case of renewal of a loan where additional funds are advanced by the savings bank, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this subsection];

(12) No Change.

(13) No Change.

(14) any documents required by the Texas Credit Title [Code, Title 4] of the Finance Code.

(b) Repealed [Smaller loans in an amount less than \$50,000 would generally be expected to meet more limited documentation guidelines of subsection (a)(1) - (8) of this section. Further, §77.4(c) and §77.5(d) of this title (relating to Home Improvement Loans and Manufactured Home Loans) provide additional documentation guidelines for making home improvement or manufactured housing loans].

(c) No Change.

(d) 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[, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing

Administration, or Farmer's Home Administration].

(e) No Change.

(f) No Change.

(g) No Change.

(h) No Change.

### **§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 [Regulation] O and W [the Federal Reserve Act, §23A and §23B], which sections [and regulations] 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 [his] spouse and the members of their [his]

immediate family, owns an interest of 10% or more in the partnership (based on the value of their [his] 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 [his] spouse and the members of their [his] 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 [his] immediate family has a substantial beneficial interest or as to which such person or their [his] 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) No Change.

(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 [his] 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) No Change.

(5) No Change.

(6) No Change.

(7) No Change.

(8) No Change.

(9) No Change.

(10) No Change.

(11) One Borrower [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 [his] 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) No Change.

(13) No Change.

(14) No Change.

(15) No Change.

(16) No Change.

**§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) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(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) No Change.

(8) No Change.

**§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 Savings and Loan Insurance Corporation (FSLIC) or] 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 [Federal Savings and Loan 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 Change.

(d) No Change.

(e) No Change.

(f) No Change.

**§77.91 Investment in and Divestiture of Subsidiary Corporations**

(a) No Change.

(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 [he] finds that:

(1) No Change.

(2) No Change.

(3) No Change.

(4) No Change.

(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 [he may at his discretion deny] such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

(d) No Change.

(e) No Change.

**§77.94 Subsidiary Operations**

(a) No Change.

(b) No Change.

(c) No Change.

(d) Each corporation shall maintain fidelity bond coverage with an acceptable bonding company in an amount that [to] adequately protects the corporation from such loss [cover each director, officer, employee, and agent who has access to cash or securities of the corporation. Such bond amount shall be in an amount equivalent to 1.0% of total assets but in no event shall be less than \$25,000 nor more than \$2 million]. Coverage as an additional insured entity under a fidelity bond of the parent [In lieu of a separate surety bond for the corporation, the] 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) No Change.

**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 [an entity that serves a public purpose. For purpose of this section, an entity serves a public purpose if it is]:

(1) the United States government or any instrumentality thereof [an electrical cooperative organized under Chapter 161 of the *Utilities Code*];

(2) any State or political subdivision, agency, or instrumentally thereof [a telephone cooperative organized under Chapter 162 of the *Utilities Code*];

(3) any local municipality, agency, or instrumentally thereof [a nonprofit water

supply or sewer service corporation organized under Chapter 67 of the *Water Code*];

(4) any federally-recognized Indian tribe [a not for profit business development corporation organized under Chapter 23, Subchapter B of the *Business Organizations Code*]; or

(5) any other entity, as required by state or federal law, or court order [any other member owned cooperative or not for profit corporation organized under a special statute to provide utility service or economic development assistance or whose purpose the commissioner determines is similar to those entities listed in paragraphs (1) - (4) of this section].

#### **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

**D.**

**Office of Consumer  
Credit Commissioner**

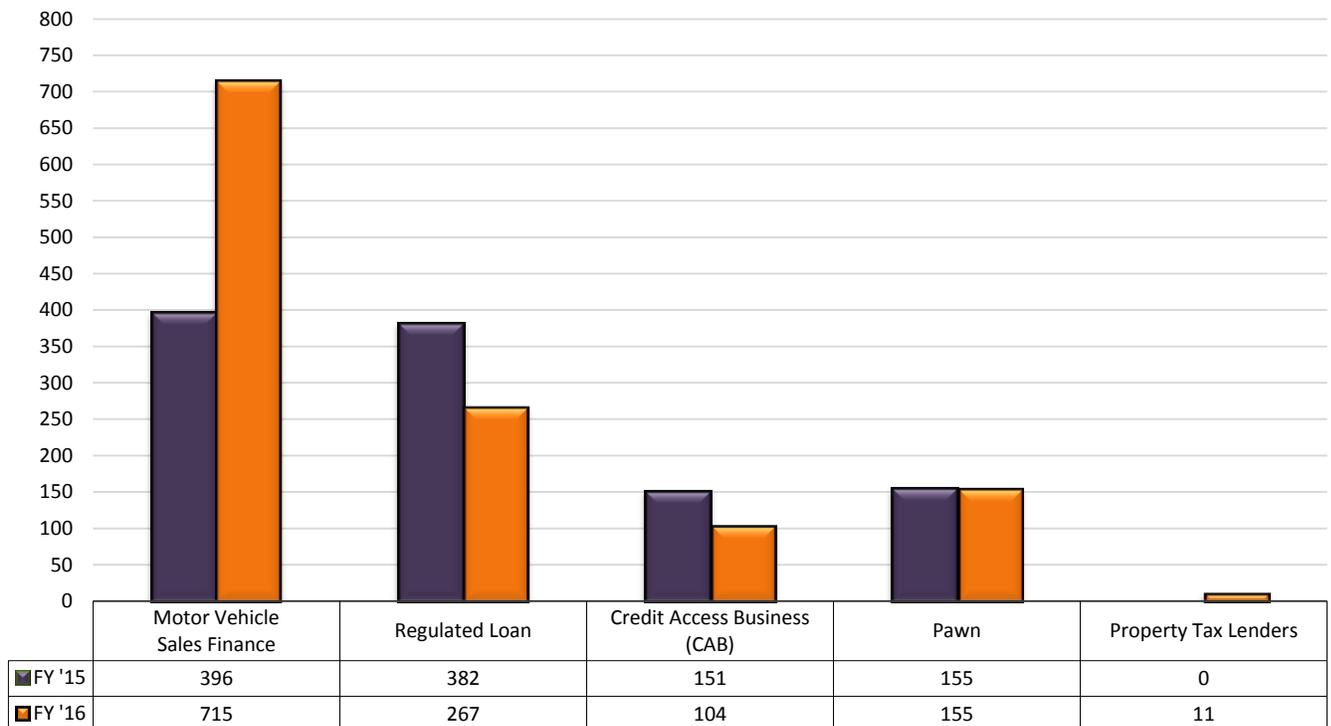


## Consumer Protection and Assistance Report

*Rudy Aguilar, Director of Consumer Protection*

Thus far in Fiscal Year 2016 (FY '16), 1,236 examinations have been conducted as compared to 1,084 examinations in Fiscal Year 2015 (FY '15). Credit Access Business (CAB) and Regulated Loan examinations conducted are behind the prior year's pace. Several administrative and staff training factors have affected examination progress this fiscal year, but the department anticipates meeting the annual examination goals in these categories. Examinations conducted for Property Tax Lenders are slightly ahead of FY '15 and examinations for Motor Vehicle Sales Finance (MVSF) are almost double for the same time period.

### Examinations Conducted: Sept - Dec Fiscal Year Comparison

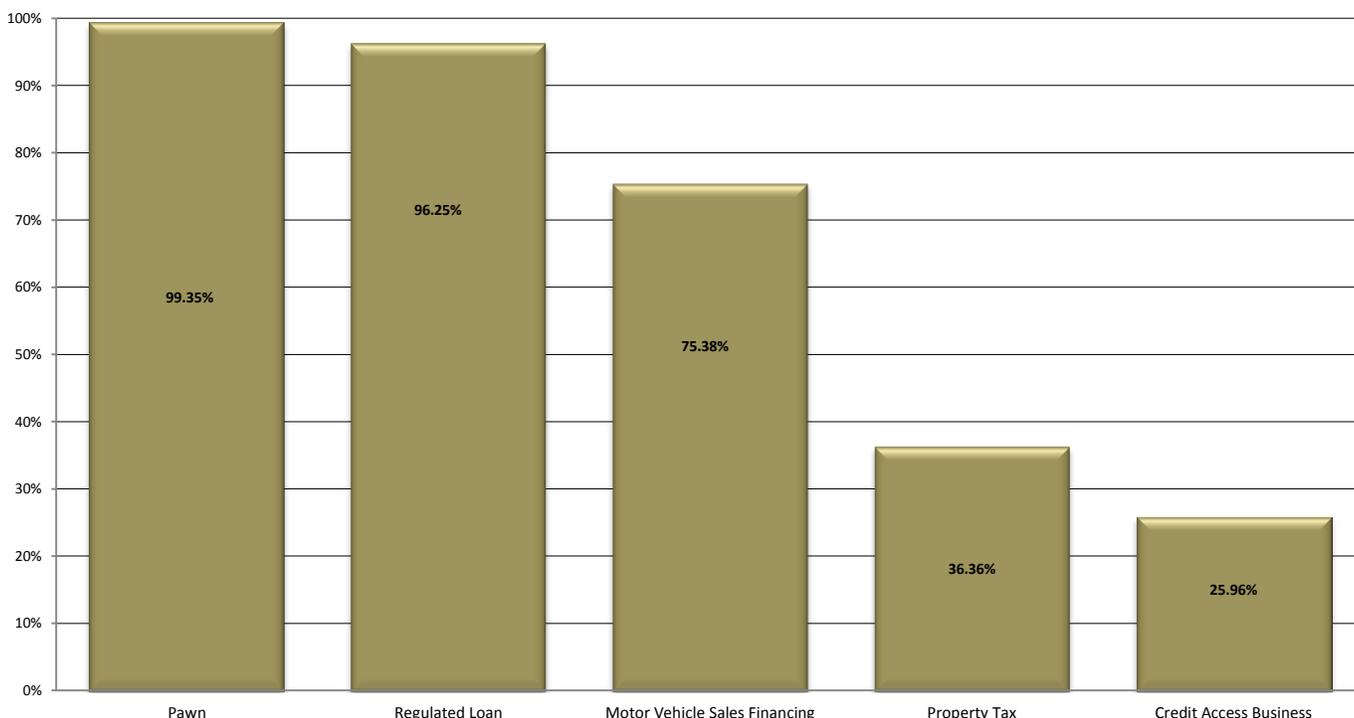


Since the last reporting period, two additional examiner positions have been vacated in Houston (Vince Emanuel, January 8, 2016, and, Tamara Davis, January 22, 2016). Also, Houston supervisor, Gene Dow announced his

retirement, effective January 31, 2016. Examiner Veronica Celis-Gonzalez, who is stationed in Brownsville, has been reassigned to the San Antonio region. In addition, one of the previously vacant examiner positions from Houston has been realigned and is currently posted in Harlingen. These two Valley positions can be more effectively managed in the San Antonio region. The vacant positions in Houston are being reposted. The Dallas region vacant positions are also currently posted. Several scheduling and training initiatives are being implemented to improve productivity and examiner capability. Initiatives include centralized exams, improved scoping, and initial and follow up training focused on motor vehicle sales financing, our largest licensee group.

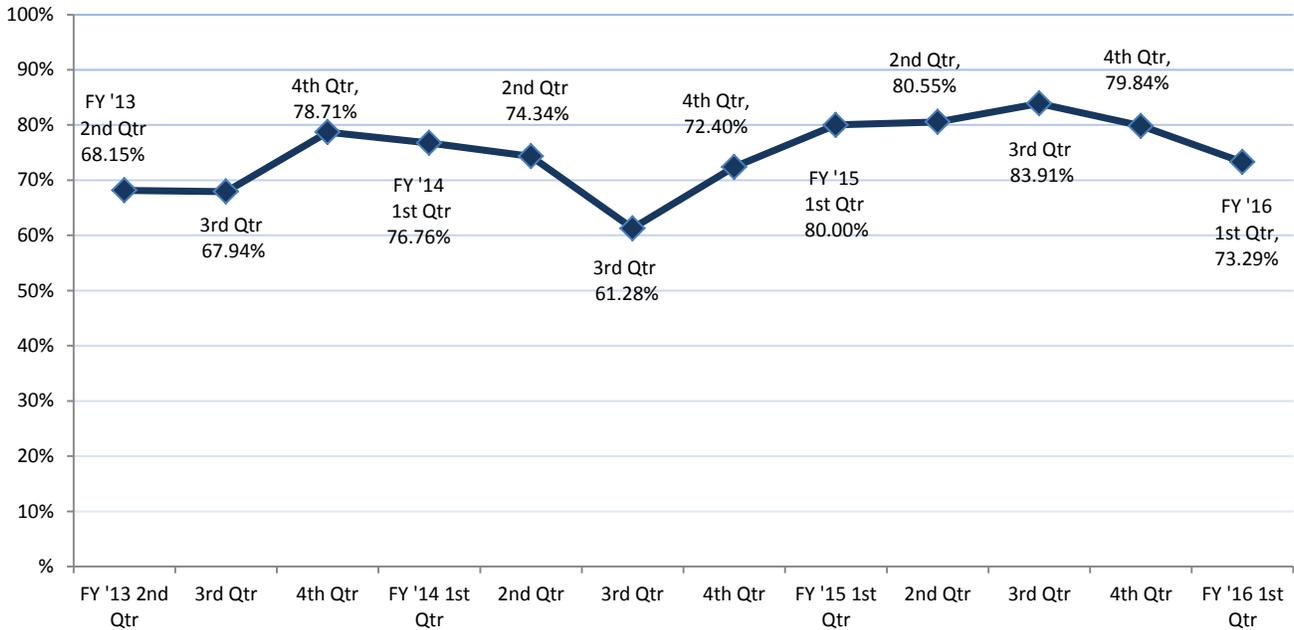
Acceptable level of compliance in the five examination areas is noted on the chart below. Pawn, Regulated Loan, and MVSF examinations conducted are within the acceptable level of compliance. The acceptable level of compliance for Property Tax and CAB examinations are 36.36% and 21.43%, respectively. The low acceptable level of compliance in the CAB examinations is due to fewer, but centralized examinations with a team of examiners covering multiple licensed locations, which leverages several efficiencies. These examinations have had an inflated effect on the acceptable level of compliance in these categories. As more examinations are completed, the anticipated level will approach a more normal compliant rate.

### Acceptable Level of Compliance FY '16 (Sept 2015 - Dec 2015)



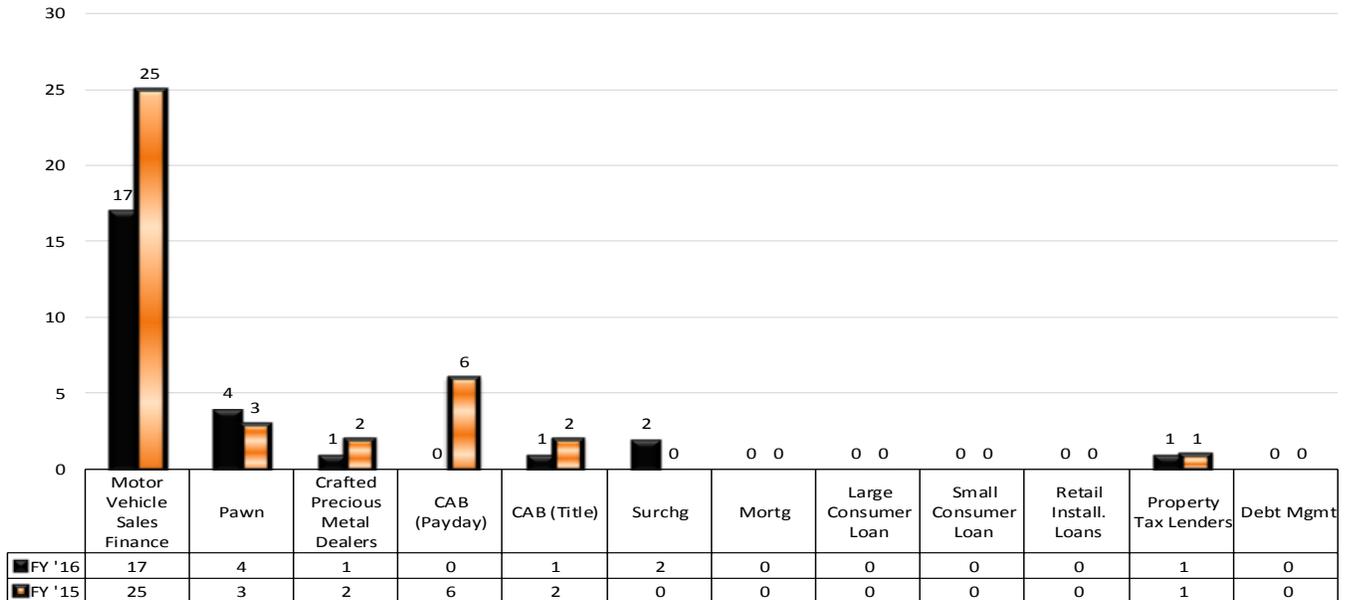
A rolling three year comparison of MVSF compliance rates by quarter is noted on the chart that follows. The lower acceptable level of compliance in this industry was also magnified by the effect of centralized examinations with unacceptable levels of compliance.

## MVSF: Acceptable Level of Compliance Fiscal Year Comparison by Quarter



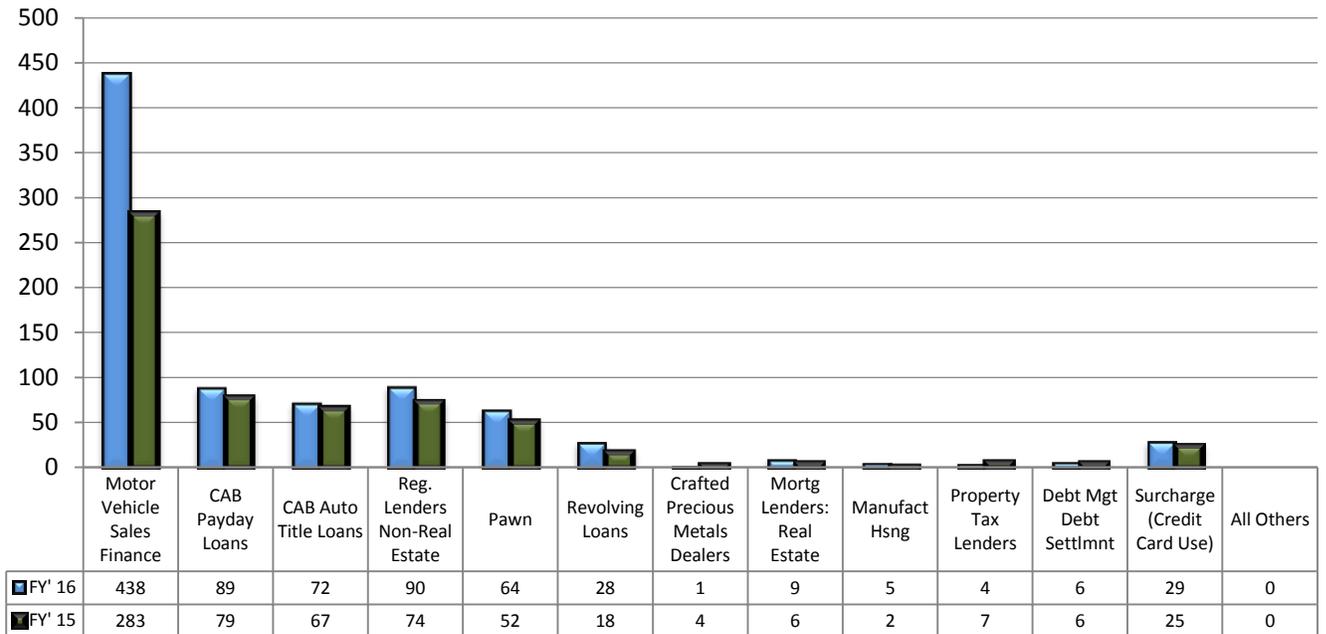
### Investigations

**Investigations Completed**  
**FY '16 (Sept 2015 - Dec 2015) Total: 26**  
**FY '15 (Sept 2014 - Dec 2014) Total: 39**



### Consumer Assistance

**Complaints Processed**  
**FY '16 (Sept 2015-Dec 2015) Total: 835**  
**FY '15 (Sept 2014-Dec 2014) Total: 623**



The complaint categories of MVSF, CAB, Regulated Lenders Non-Real Estate, and Pawn comprise 90.18% of total complaints for this reporting period.

Again for this reporting period, complaints in the MVSF category is the largest category at 52.46%. Complaint issues are categorized as: repossessions (16%), payment postings/dispute of account balances (15%); issues related to ancillary products and insurance (10%), consumer right of rescission (12%), unlicensed activity (12%), financing conditioned on subsequent assignments (8%), dispute of contracted price or terms (6%), title issues (6%), mechanical issues (5%) and charges and fees (2%).

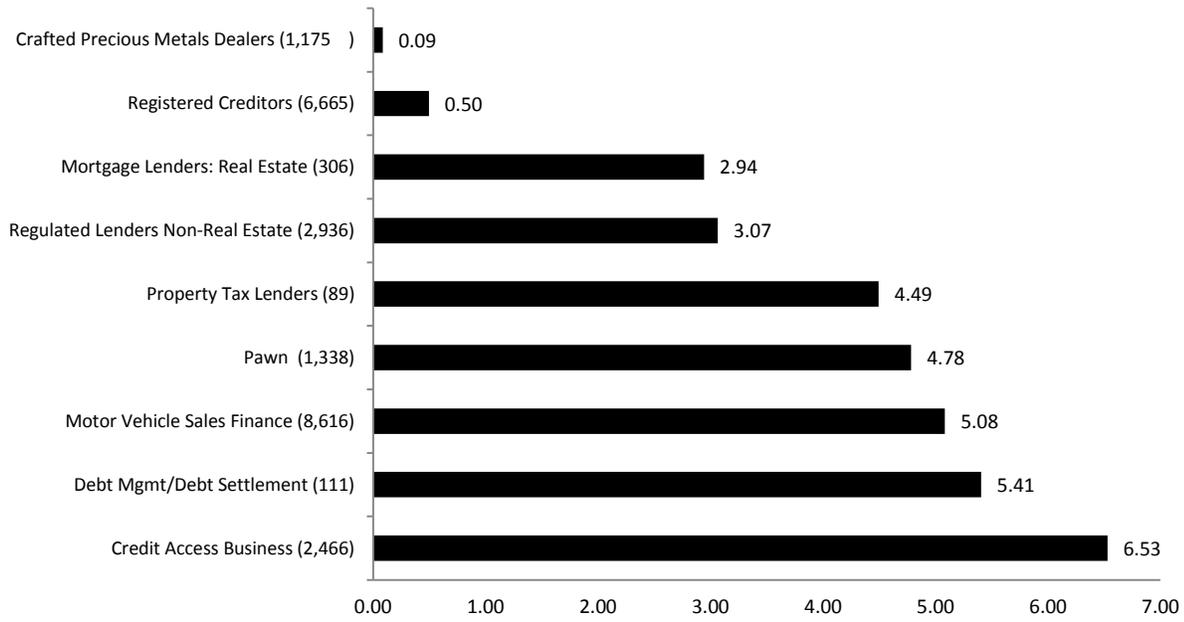
CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 19.28%. Separately, payday loan complaints are 10.66% and title loans are 8.62% of total complaints. CAB payday complaints involved: allegations of improper posting of payments-ACH and dispute of account balances (40%), allegations of id theft/fraudulent loan applications (16%), collection practices (8%), issues with staff customer service (8%), allegations of fraud or scams (8%), and complaints about fee amounts being charged (4%). CAB title loan complaints by type were primarily: allegations of improper posting of payments and balance owed not decreasing (35%), repossessions (17%), consumers alleging financial hardship and seeking assistance (10%), release of titles upon payoff (11%), and charges and fees (10%).

The third largest complaint category was Regulated Lenders Non-Real Estate at 10.78% for this reporting period. Primary issues centered primarily on: allegations of abusive collection practices (30%), allegations of incorrect payoff amount (27%), and issues with customer service (11%).

The fourth largest category at 7.67% was Pawn complaints. The predominant issues were: replacement of lost/damaged goods (33%); redeeming of pawned items (23%); forfeiture of goods (11%); victim assistance in stolen items (8%), pawn service charges (6%); and monitoring the acceptance of goods (3%).

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved CAB complaints, 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-Dec 2015)**



■ Complaints per Hundred Licenses

\*License-Registrant levels as of 01-04-16



## **Licensing Report**

*Mirand Zepeda, Manager*

### Renewals

The renewal period for Credit Access Businesses, Regulated Lenders and Property Tax Lenders ended on January 1. Approximately 87% of CABs, 99% of Regulated Lenders and 87% of Property Tax Lenders renewed. Many users utilized ALECS to complete online submissions for renewals, generating immediate status changes and eliminating paperwork processed by the department which created a streamlined and more efficient process for internal and external users.

The registration renewal period for Debt Management Service Providers ended on February 1. The department continues to assist and analyze data collected from registrants.

The residential mortgage loan originators' renewal period ended on December 31, with a renewal rate of 77%. All RMLOs renew online via NMLS and the reinstatement period ends on February 29.

### Applications Processing

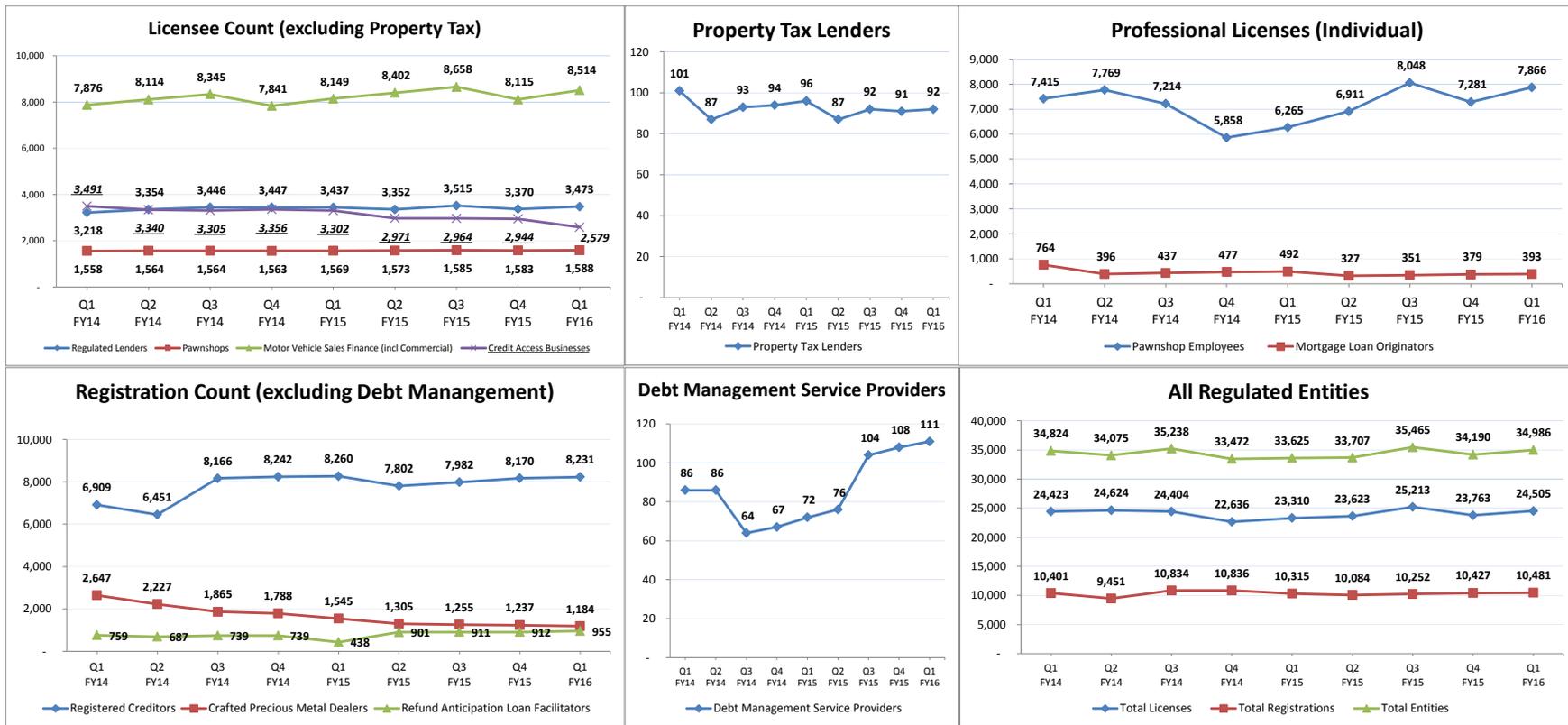
The licensing department reached a momentous benchmark in February, diminishing pending applications to less than 300. Applications are steadily received, continuing to average approximately 150 per month, but enhancements to ALECS, a focused team and increased impetus on productivity can be attributed to this departmental goal finally being reached.

Pending pawn employee applications have increased due to a vacancy in the licensing department, however the opening has recently been filled and in the next few weeks that number should diminish.

### 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 FY16 first quarter data, as of November 30, 2015.

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



## CAB Reporting Update

Reports through third quarter of 2015 are compiled and published on the OCCC website. The 4<sup>th</sup> quarter and annual submission due date was 1/31/2016. Presented is a historical comparison of January – September (Q1-Q3) reports through the years. The number of stores and overall volume of loans have decreased since their 2013 peak. This trend is expected to continue as stores consolidate and loan volume increases over the internet. Additionally, the trend of installment lending, as a percentage of the industry, continues to grow representing 39% of the payday market and 27% of the title loan market.

<b>Data Highlights (All Loan Types) Q1 - Q3 Comparison</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
Number of new payday loans	1,749,881	1,727,233	1,914,163	1,840,000
Number of new auto title loans	250,296	306,920	385,866	350,451
Percentage of Payday Loans due in multiple installments	39%	32%	24%	15%
Percentage of Auto Title Loans due in multiple installments	27%	17%	14%	17%
Number of vehicles repossessed under all auto title loans	28,201	32,460	28,134	26,973
Average number of locations reporting activity	2,575	2,999	3,168	3,113

<b>Payday Loans Q1 - Q3</b>	<b>Single Installment</b>		<b>Multiple Installment</b>	
	<b>2015</b>	<b>2014</b>	<b>2015</b>	<b>2014</b>
Number of consumers obtaining loans	800,703	909,958	612,530	492,366
Number of New Loans	1,065,977	1,168,195	683,904	559,038
Number of refinances on new loans in the quarter <sup>1</sup>	787,103	984,101	55,985	44,429
Number of total refinances <sup>2</sup>	1,945,308	2,466,961	190,153	100,515
Average Loan Amount <sup>3</sup>	\$480	\$476	\$535	\$539
Average Fee per \$100 borrowed <sup>3</sup>	\$23.85	\$23.37	\$168.72	\$150.54
Average original term (in days) <sup>3</sup>	19	19	159	152

<b>Title Loans Q1 - Q3</b>	<b>Single Installment</b>		<b>Multiple Installment</b>	
	<b>2015</b>	<b>2014</b>	<b>2015</b>	<b>2014</b>
Number of consumers obtaining loans	162,787	227,816	63,519	50,559
Number of New Loans	183,524	253,250	66,772	53,670
Number of refinances on new loans in the quarter <sup>1</sup>	84,220	154,834	8,438	8,786
Number of total refinances <sup>2</sup>	864,776	936,381	22,708	36,420
Average Loan Amount <sup>3</sup>	\$1,262	\$1,160	\$1,078	\$1,078
Average Fee per \$100 borrowed <sup>3</sup>	\$17.16	\$19.20	\$90.51	\$96.40
Average original term (in days) <sup>3</sup>	30	30	168	192

**1 Refinance activity represents only the renewals occurring in the quarter the loan was originated.**

**2 Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.**

**3 Equal weighted average from the quarters**



## **Communications, Human Resources & Administration Report**

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

### **LEGISLATIVE UPDATE**

On January 26, 2016, Commissioner Pettijohn and staff attended the Senate Business & Commerce Interim Committee Hearing held at the Capitol. The Committee met to examine and make recommendations for necessary changes regarding the collection process of delinquent ad valorem property taxes, including an inquiry into the role that tax lien transfers play in forestalling foreclosure. Commissioner Pettijohn testified on regulatory and policy issues related to property tax lending in Texas and updated the members on recent industry activities, rulemaking and litigation.

### **STRATEGIC PLANNING**

Since last reported, staff has begun working diligently on production of the 2017-2021 Strategic Plan. In addition, since the last planning process, the agency has seen some changes to the way in which it provides services. A dedicated and talented cross-agency team is heading up this project and has begun weekly discussions and collecting feedback from staff to develop a comprehensive plan.

The agency is currently finalizing the details for a stakeholders meeting to be held early March. Invitations will be sent out to various industry representatives and associations inviting input and comment on economic, demographic, and regulatory influences that may affect business operations and industry climate.

Additionally, as part of its strategic planning process, the OCCC also invited a sample of its customer base to participate in the Customer Engagement and Consumer Assistance Survey. Survey invitations were sent via-email through SurveyMonkey.

### **STAKEHOLDER ENGAGEMENT & COMMUNICATION**

Agency staff continues to provide a combination of live presentations and advisory publications to licensees.

Eric Fancher, Dallas Financial Examiner, and Huffman Lewis, Financial Examiner, Austin, presented at the Houston Independent Dealers Association (HIADA) a training seminar on December 14, in Houston. Christine Graham, Training Coordinator, made a similar presentation at the TxDMV seminars on January 21, in San Antonio. 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 January 5, 2016 in Austin. Huffman Lewis, Financial Examiner, Austin, also presented at the Auto Action Seminar a training on January 15, 2016 in Houston.

**HUMAN RESOURCES**

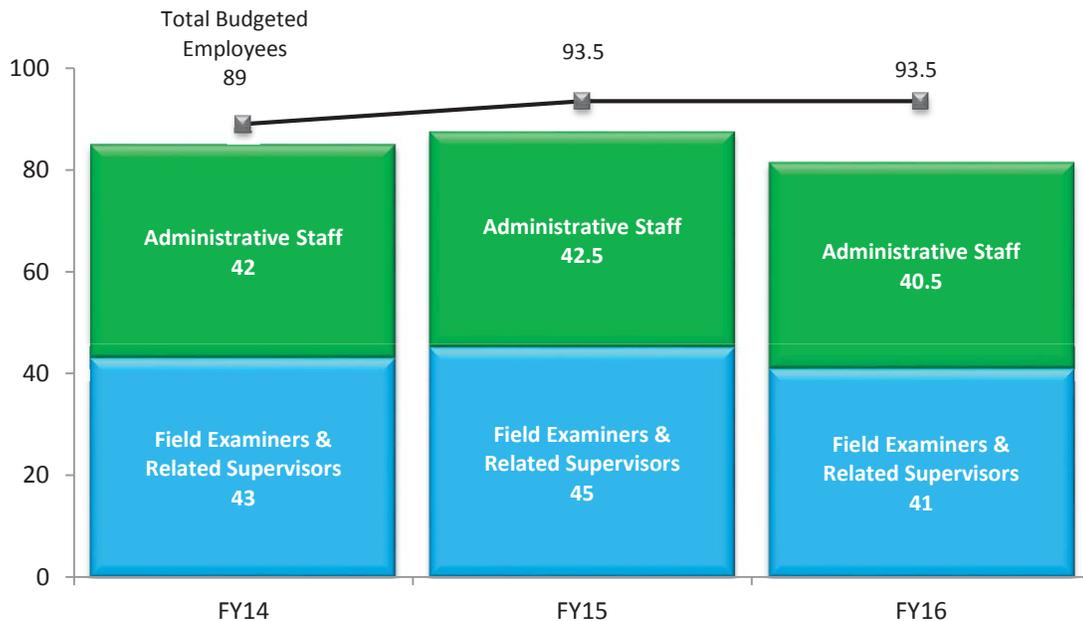
For this reporting period (December and January), the agency had several staff members depart the agency: 1 Financial Examiner I, 1 Financial Examiner II and 1 Financial Examiner V. However, the agency has filled the Accounting Technician II to bring our FTE count as to 79.5 FTEs.

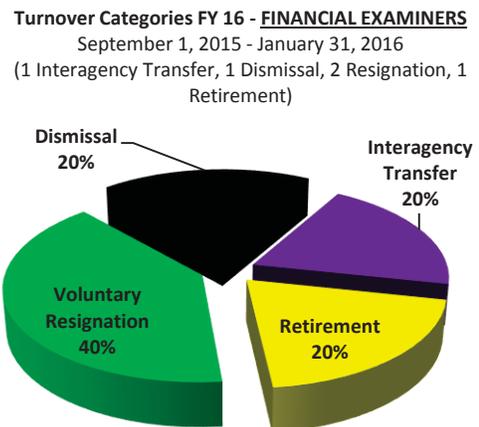
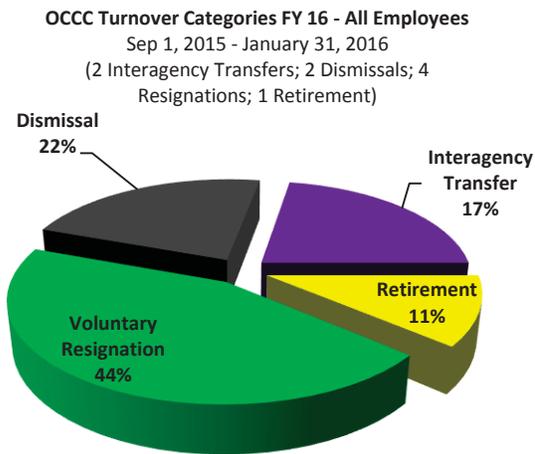
Human Resources staff continues to stay abreast of HR related issues and attended the Comptroller of Public Accounts December USPS User Group Meeting. The topics covered were new commuter spending accounts, changes to the 401k and 457 plans, and information about the new 1095-C reporting required by the IRS.

Current recruiting efforts are focused on filling positions both in the field and in the Austin office. Some of these positions were intentionally delayed while the license renewal cycle for several industries was in process enabling the agency to more effectively match its resources to workload requirements.

FY 16 Vacancies	
Vacancy	Status
Financial Examiner I – Houston (3 Openings)	Active
Financial Examiner I – Rio Grande Valley	Active
Financial Examiner I – Dallas (3 Openings)	Active
Accountant III	Active

**OCCC Employee Data FY 14 - FY 16**





### FINANCIAL LITERACY

As previously reported, staff attended a training conducted by the Consumer Financial Protection Bureau (CFPB) to learn how to use and train others on their “*Your Money, Your Goals*” curriculum that could be used for financial coaching initiatives or general presentations. Since then, staff has begun to coordinate with various organizations to present curriculum.

Staff has created pre and post-surveys for all consumers attending consumer education presentations. The survey feedback will inform staff on how to make program improvements to provide the greatest impact on consumer behavior.

To date, staff has reached 85 of the 325 consumers FY16 performance measure, through live presentations and a webinar presentation.



## **Accounting & IT Reports**

### Accounting

The accounting department has completed processing and distributing W-2's for 2015. In addition, all 1099's have been distributed within the IRS deadlines. The department welcomed a new employee as an accounting technician who started in January. The department is still greatly impacted by an accountant vacancy and is experiencing difficulty in identifying a suitable replacement candidate.

### Information Technology-Legacy Modernization

The agency is on track to end outside maintenance for ALECS in March of 2016, when the agency's internal programmer will take over routine maintenance. Additional functionality continues to be added and process improvements implemented. Some of these updates are already being performed in house, while some new functionality continues to be programmed by the vendor.

A vendor has been chosen to develop the Annual Reporting, Complaints and Examination project. The agency is currently in final negotiations regarding cost and scope. It is anticipated that a complete requirements document and a fully approved and signed SOW will be in place in early March. The current schedule is to roll out the first working module, documentary fee filing, in April.

**OFFICE OF CONSUMER CREDIT COMMISSIONER**  
**EXECUTIVE SUMMARY**

*As of November 30, 2015*

	FY 2014	FY 2015	FISCAL YEAR 2016				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
<b>CONSUMER PROTECTION</b>							
Monies Returned to Consumers (000)	22,977	8,315	4,348				4,348
Regulated Lenders Examinations	1,106	1,065	173				173
Property Tax Lender Examinations	34	23	10				10
Pawnshop Examinations	593	533	112				112
Motor Vehicle Examinations	1,247	1,565	513				513
Credit Access Businesses Examinations	1,031	816	101				101
<b>CONSUMER ASSISTANCE</b>							
Telephone Complaints Received	1,067	1,186	338				338
Written Complaints Received	976	1,000	221				221
Total Complaints Processed	1,915	2,131	650				650
% of Written Complaints Closed within 90 Calendar Days	90.60%	82.47%	95.72%				95.72%
<b>ADMINISTRATIVE ENFORCEMENT ACTIONS</b>							
Originated	321	472	83				83
Finalized	335	390	95				95
<b>LICENSING AND REGISTRATION</b>							
<b>Licenses</b>							
Regulated Loan Licenses	3,447	3,370	3,473				3,473
Pawnshop Licenses	1,563	1,583	1,588				1,588
Pawnshop Employee Licenses	5,858	7,281	7,866				7,866
Commercial MV Sales Fin. Licenses	16	19	25				25
Motor Vehicle Sales Finance Licenses	7,825	8,096	8,489				8,489
Property Tax Loan Licenses	94	91	92				92
NMLS-Mortgage Loan Originators	477	379	393				393
Credit Access Business Licenses	3,356	2,944	2,579				2,579
<b>Registrations</b>							
Registered Creditors	8,242	8,170	8,231				8,231
Crafted Precious Metal Dealers	1,788	1,237	1,184				1,184
Debt Management Service Providers	67	108	111				111
Refund Anticipation Loan Facilitators	739	912	955				955
<b>Applications</b>							
Business -- New	1,427	1,832	409				409
Business -- Change of Ownership	473	624	139				139
Pawnshop Employees -- New	2,011	3,010	715				715
<b>HUMAN RESOURCES DATA</b>							
Field Examiners Staffing	42	43	41				41
Total Staffing	83	85.5	81.5				81.5

**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	
<b>Output Measures-Key</b>					
1-1-1	COMPLAINT RESOLUTION				
	1. # COMPLAINTS CLOSED				
	Quarter 1 2,100	650	650	30.95%	*
	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.				
	2. # INVESTIGATIONS CLOSED				
	Quarter 1 86	29	29	33.72%	*
	A concerted effort has been made to close older investigations.				
2-1-1	EXAMINATION AND ENFORCEMENT				
	1. # COMPLIANCE EXAMINATIONS PERFORMED				
	Quarter 1 4,000	909	909	22.73%	
2-2-1	LICENSING				
	1. # BUSINESS APPLICATIONS PROCESSED				
	Quarter 1 1,875	409	409	21.81%	
	2. # INDIVIDUAL LICENSES PROCESSED				
	Quarter 1 2,500	715	715	28.60%	
3-1-1	# CONSUMERS RECEIVING FINANCIAL EDUCATION				
	Quarter 1 325	46	46	14.15%	*
	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.				

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



## **Legal Department Report**

*Michael Rigby, General Counsel*

February 2016

### Enforcement Report

#### **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 State Office of Administrative Hearings (“SOAH”) before an Administrative Law Judge. The proposal for decision in this matter is currently pending with the Administrative Law Judge.

#### **Pawnshop Employee – Application Denial**

On September 16, 2015, the OCCC participated in two contested case hearings before the SOAH involving pawnshop employee license application denials. The ALJ issued proposals for decision recommending the denial of both applications. On November 10 and 17, 2015, Juan V. Garcia, as the Commissioner’s designee, adopted both recommendations and issued final orders denying the applications. Neither applicant filed a petition for judicial review.

## Administrative Rule Report

At the February meeting, the OCCC is presenting three rule actions:

- Repeal and replacement of the rule regarding license transfers, and amendments to consumer disclosures and reporting requirements for credit access businesses.
- An adoption of amendments providing technical corrections to rules for crafted precious metal dealers.
- Proposed amendments, new rules, and repeals regarding deferment charges, documentary fees, debt cancellation agreements, licensing processes, and technical corrections for motor vehicle sales finance licensees.

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

- Amendments relating to rule review for tax refund anticipation loans, administration, and interpretations and advisory letters.

## 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 January 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 four application denial actions in Fiscal Year 2016.

<b>Enforcement Actions Completed as of January 31, 2016</b>				
	<b>FYTD 2016</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2013</b>
<b>Revocation / Suspension Actions</b>				
Regulated Loan License	1	27	10	3
Pawnshop License	1	2	1	1
Pawnshop Employee License	1	2	1	2
Credit Access Business	1	1	4	0
Motor Vehicle Sales Finance License	6	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0
<b>Total Revocation / Suspension Actions</b>	<b>10</b>	<b>38</b>	<b>24</b>	<b>9</b>
<b>Cease &amp; Desist Actions</b>				
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	6	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)	1	1	0	0
Unlicensed Activity – Other Chapters	0	0	2	10
<b>Total Cease &amp; Desist Actions</b>	<b>8</b>	<b>25</b>	<b>17</b>	<b>28</b>
<b>Administrative Penalty Actions</b>				
Regulated Loan License	0	73	121	144
Pawnshop License	33	4	6	9
Pawnshop Employee License	1	4	8	8
Credit Access Business License	58	136	56	52
Motor Vehicle Sales Finance License	34	76	88	112
Property Tax Loan License	3	8	18	12
Crafted Precious Metal Dealer	0	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
<b>Total Administrative Penalty Actions</b>	<b>129</b>	<b>301</b>	<b>298</b>	<b>337</b>
<b>Total Enforcement Actions Closed</b>	<b>147</b>	<b>364</b>	<b>339</b>	<b>374</b>

From December 1, 2015 to January 31, 2016, the OCCC:

- issued 47 final orders,
- opened 36 cases in order to assess administrative penalties,
- opened 6 cases in order to issue administrative injunctions,
- held 1 administrative hearing, and
- dismissed 1 administrative hearing.

The OCCC has 3 hearings scheduled between February 1, 2016 and March 31, 2016.

## Litigation

### ***Rowell v. Pettijohn:***

This case is currently before the Fifth Circuit Court of Appeals, and involves the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. In 2014, a group of merchants filed a complaint in federal district court against Leslie Pettijohn in her official capacity, to enjoin enforcement of Section 339.001. The merchants argue that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, in violation of the First and Fourteenth Amendments to the U.S. Constitution. In February 2015, the district court granted the OCCC's motion to dismiss the lawsuit, holding that Section 339.001 is a regulation of pricing and economic conduct rather than speech, and that it is not void for vagueness. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (Feb. 4, 2015).

The plaintiffs appealed the case to the Fifth Circuit. Both sides filed their briefs on the merits, and oral argument was held on December 1, 2015. Shortly after oral argument, the Fifth Circuit requested supplemental briefing from both sides regarding two issues: (1) whether Section 339.001 can be interpreted to prohibit dual pricing, and (2) whether this interpretation would present a preemption issue in light of federal law. Both sides filed their supplemental briefs on December 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 has 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 January 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 City of Denton filed a response to the petition, ACE Cash Express filed a reply, and interested parties filed amicus curiae briefs.

***Property Tax Lender TILA Litigation:***

A case is pending in the Fifth Circuit Court of Appeals to consider 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 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 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 is scheduled for 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).

### Attorney General Opinion Request

On December 17, 2015, the Texas attorney general received opinion request number RQ-0084-KP from Representative James Keffer. The request asks whether certain fees imposed by residential landlords violate the credit card surcharge prohibition in Texas Finance Code § 339.001 or the debit card surcharge prohibition in Texas Business & Commerce Code § 604A.002. The requestor argues that processing fees are not prohibited surcharges if they: (a) are convenience fees for online payment, or (b) are paid to a payment processor that provides multiple services such as document management and contract preparation.

On January 22, 2016, the OCCC filed a brief with the attorney general in response to this request, arguing that it would be consistent with the attorney general's policy to close the request, because the meaning of "surcharge" under Section 339.001 is the subject of pending litigation (the *Rowell* case discussed above). The OCCC's brief also argues that any alternatives to the credit card surcharge prohibition should be strictly limited to five alternatives, consistent with the agency's published advisory bulletins: (1) uniform pricing with no surcharge, fee, or discount; (2) a uniform convenience fee for all payments regardless of whether or not made online; (3) a cash discount; (4) an option to pay by credit card with no fee; and (5) a third-party payment processing fee where the seller receives no portion of the fee, there is an arm's-length relationship between the seller and processor limited to processing payments, and multiple payment channels are available to the buyer. The Texas Apartment Association also filed a brief on the request, arguing that the fees identified in the request are not prohibited surcharges.

### Advisory Bulletins

From December 1, 2015 to January 31, 2016, the OCCC issued one advisory bulletin. OCCC bulletin B16-1 describes the updated notice with OCCC contact information that must be included on retail installment contracts under Texas Finance Code, Chapter 345. It explains that if creditors are using the previous version of the notice, they can continue doing so until December 31, 2016.

### Interpretation Requests

From December 1, 2015 to January 31, 2016, the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of January 31, 2016.

### Open Records Requests

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

### Gifts Received by the OCCC

From December 1, 2015 to January 31, 2016, the OCCC did not receive any gifts.

Rule Item/Purpose	Proposal Date	Adoption Date
<p><b>Rules for Credit Access Businesses - Adopt New Rule, Amendments, and Repeal (from Rule Review, Part 2)</b>                      7 TAC, Chapter 83, Subchapter B</p> <p>To update consumer disclosures; to clarify reporting requirements and license transfers</p>	<p>12/18/15</p>	<p>Presented for Adoption 02/19/16</p>
<p><b>Rules for Crafted Precious Metal Dealers - Adopt Amendments (from Rule Review)</b>                      7 TAC, Chapter 85, Subchapter B</p> <p>To provide clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information</p>	<p>12/18/15</p>	<p>Presented for Adoption 02/19/16</p>
<p><b>Motor Vehicle Installment Sales - Adopt Completed Rule Review</b>                      7 TAC, Chapter 84</p> <p>To adopt the completed rule review of Chapter 84 under Tex. Gov't Code, §2001.039</p>	<p>Not applicable</p>	<p>Presented for Adoption 02/19/16</p>
<p><b>Motor Vehicle Installment Sales - Proposed Amendments, New Rules, and Repeals (from Rule Review)</b>                      7 TAC, 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>	<p>02/19/16</p>	

Rule Item/Purpose	Proposal Date	Adoption Date
<p><b>Interpretations and Advisory Letters - Rule Review</b>                      7 TAC, Part 1, §1.201</p> <p>To conduct standard 4-year review under Tex. Gov't Code, §2001.039</p>	<p>06/10/16</p>	
<p><b>Administration - Rule Review</b>                      7 TAC, Part 5, Chapter 82</p> <p>To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to update public information procedures; to make technical corrections</p>	<p>06/10/16</p>	
<p><b>Tax Refund Anticipation Loans - Rule Review</b>                      7 TAC, Part 5, Chapter 87</p> <p>To conduct standard 4-year review under Tex. Gov't Code, §2001.039</p>	<p>06/10/16</p>	

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## **D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

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

**PURPOSE:** The purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039. The rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers. Section 83.3003 is being proposed for repeal and replacement with a new rule clarifying license transfers.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve new §83.3003; approve the amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and approve the repeal of §83.3003 with changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve new §83.3003; the amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and the repeal of §83.3003.

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter B. Rules for Credit Access Businesses*

The Finance Commission of Texas (commission) adopts new §83.3003 (repeal and replace); adopts amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and adopts the repeal of §83.3003 (repeal and replace), in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §§83.3004, 83.6003, 83.6006, 83.6007, and 83.6008; and adopts the repeal of §83.3003 (repeal and replace) without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16).

The commission adopts new §83.3003 (repeal and replace) and the amendments to §83.5001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16). These changes are being made in order to address the official comment received, as discussed in the following paragraph.

The commission received one written comment on the proposal from the Consumer Service Alliance of Texas. The comment included recommendations relating to the license transfer issues of permission to operate and transferee's authority to engage in business as provided in §83.3003. Additionally, the comment offered suggestions related to the data reporting requirements contained in §83.5001 and the implementation period of these rule changes. The commission's response to the official comment is included after the purpose discussions following each

respective rule provision receiving comments.

In general, the purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The adopted rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

This is the second of two anticipated rule actions for credit access businesses. In the January 1, 2016, issue of the *Texas Register*, the commission adopted the first rule action, including rule changes relating to definitions, license applications, fees, examination authority, and recordkeeping requirements.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The individual purposes of the adopted rule changes are outlined in the paragraphs to follow.

Section 83.3003 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Both the prior and new versions of §83.3003 describe what

constitutes a transfer of ownership requiring the filing of a transfer application. The 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)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed location. In response to a precomment, this definition includes technical changes to the definition of "transfer of ownership" previously codified at §83.3003(a). These changes include placing the reference to acquisition by gift, devise, or descent in the general language at the beginning of the definition, and removing the current rule's statement that a transfer of ownership includes an acquisition where the OCCC "has reason to believe that proper regulation of the licensee dictates that a transfer must be processed."

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, §393.620. 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 credit access business 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. The subsection's second sentence states: "A request for permission to operate may be denied even if the application contains all of the required information." This sentence is similar to a sentence in the former rule at §83.3003(d). The commenter objected to this sentence, stating: "No guidelines are given for a denial. Reasons for denying a request for permission to operate fall into broad categories, such as current enforcement problems, issues with management or ownership, etc... Those categories should be spelled out in the proposed rule." The commission believes that listing the categories for denying a permission to operate, such as enforcement and management issues, is unnecessary. The permission to operate is a temporary authorization, and denial of the request is not a final denial of the license application. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. It is important to maintain the current rule's flexibility to ensure that the OCCC can respond to unanticipated situations that require a closer review of the application

before the transferee begins business. Prudent parties can address potential problems in several ways. They can submit application materials well in advance of the transfer of ownership. By doing this, the parties can ensure that they have resolved outstanding issues without having to rely on the temporary permission to operate. Alternatively, the transferee could wait until approval of the permission to operate to begin operating the business. Either of these practices would seem to address the commenter's concerns. Thus, the commission maintains the language proposed in §83.3003(f) for this adoption, with the addition of this clarifying statement: "The denial of a request for permission to operate does not create a right to a hearing."

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. The commenter requested a "time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making the decision before the deadline." The commission believes that a time frame for the permission to operate is unnecessary. As discussed above, denial of the request is not a final denial of the license application. Although the agency has occasionally denied requests for permission to operate in certain situations in the past, the agency would generally deny the application if there were a significant issue preventing approval. Regarding the requirement that the transferee immediately cease doing business if the OCCC denies the permission to operate, the same commenter

stated: "It is disruptive for consumers with outstanding loan transactions to have the buyer's employees assume operational responsibility for a store, only to have a subsequent decision by the agency require the seller to 're-staff' the store temporarily." As discussed above, prudent transferees can address this issue by submitting application materials in advance of the transfer of ownership, or by waiting until approval of the permission to operate to begin operating the business. Accordingly, the commission declines to add a time frame for agency decision on the permission to operate as it is unnecessary.

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 §83.3004, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to new §83.3003. 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.

Section 83.5001 relates to quarterly and annual reports that credit access businesses are required to file with the OCCC. In the proposal, an amendment to subsection (a) stated: "All information provided on each quarterly or annual report must be accurate." Regarding this requirement, the commenter suggested adding the following phrase at the end of this provision: "and consistent with all requirements in this section notwithstanding other requirements imposed by other authorities." The commenter

explained: "Recent amendments to municipal ordinances indicate cities may implement their own credit access business data reports. The Consumer Financial Protection Bureau has announced it will be publishing comprehensive payday and motor vehicle title rules in the first calendar quarter of 2016 that will likely include data reporting. Local and federal rules may conflict with state reporting instructions. We seek to avoid difficulties with overlapping regulatory structures by clarifying that the Texas statutes and rules are designed for its data collection purposes."

In response to this comment, the amended text in §83.5001(a) states: "Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions." This is intended to clarify that the annual and quarterly reports submitted to the OCCC must comply with the OCCC's instructions. Any additional reports required under a municipal ordinance or federal law are separate from the quarterly and annual reports submitted to the OCCC under Texas Finance Code, §393.627 and §83.5001.

Subsection (e) codifies the administrative penalty structure currently used by the agency, where the penalties increase the more times a credit access business fails to send in a timely, accurate report within a reporting year. Subsection (e)(2) provides a \$100 administrative penalty per licensed location for the first violation, \$500 for the second violation, and \$1,000 for the third and subsequent violations. In addition, subsection (e)(3) provides for license suspension or revocation for the fourth or subsequent

violation. These amendments are based on three sections: Texas Finance Code, §14.208, which authorizes the OCCC to issue injunctions and assess an administrative penalty against a licensee that violates an injunction; Texas Finance Code, §14.251(a-1), which authorizes the agency to assess an administrative penalty against a credit access business that knowingly and wilfully violates Chapter 393; and Texas Finance Code, §393.614(a), which authorizes the agency to suspend or revoke a credit access business license if the licensee knowingly violates Chapter 393.

Section 83.5001(e) includes a change from the proposal to specify the OCCC's authority to assess an administrative penalty for violating an injunction.

In §83.6003, concerning Posting of Fee Schedule and Notices, the adopted amendments update the in-store notice with the OCCC's contact information. Under Texas Finance Code, §393.222(a)(2), a credit access business must post a notice containing the OCCC's contact information in a conspicuous location. The amendment to subsection (a)(2) includes the OCCC's updated website and the updated email address for consumer complaints. The amendment also includes updated language regarding how to file a complaint. The amendment to subsection (b)(2) contains a conforming change describing the notice as the "OCCC notice."

In §83.6006, concerning Format, the amendment to subsection (c) specifies that the consumer cost disclosure must fit on one page, printed on one side. This replaces the former language stating that the disclosure must be printed on two pages. The adopted amendment conforms to the amended

figures in §83.6007, which are shortened from two pages to one.

In §83.6007, concerning Consumer Disclosures, amendments adopted throughout subsections (a) through (d) make a technical correction to replace the word "or" with "and." The amendments require the credit access business to provide the consumer cost disclosure "before a credit application is provided and before a financial evaluation occurs." One precommenter requested clarification that the disclosure must be provided only once. To clarify, the credit access business must provide the disclosure once, at a time that is both before a credit application is provided and before a financial evaluation occurs. This provision is based on Texas Finance Code, §393.222(a), which requires the credit access business to provide the disclosure "[b]efore providing services described by Section 393.221(1)," that is, before the credit access business assists the consumer in obtaining a payday or title loan.

The adoption also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. There are two primary purposes to the adopted amendments to the disclosures. First, the amendments streamline the disclosures to simplify layout and remove redundant information. Second, the amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2014 quarterly and annual reports provided by credit access businesses to the OCCC.

In addition, the adopted amendments to the consumer disclosures include information required by state and federal law. Texas Finance Code, §393.223(a), requires the consumer disclosure to include "(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt; (2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and (3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans." The consumer disclosure must also include additional items to comply with the advertising provisions of the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24. In particular, Regulation Z, 12 C.F.R. §1026.24(d)(2), requires disclosure of the annual percentage rate and terms of repayment. Also, 12 C.F.R. §1026.24(c) provides that if a simple rate of interest other than the annual percentage rate is disclosed, it must be "stated in conjunction with, but not more conspicuously than, the annual percentage rate."

The commenter requested a delayed implementation date for providing the amended credit access business disclosures under §83.6007. The commenter recommended a 30-day delay for licensees that do not use preprinted forms, and a delayed date of September 1, 2016, for licensees that use preprinted forms. In response to this comment, the agency will

allow a delayed implementation date of September 1, 2016, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date until September 1, 2016, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on September 1, 2016, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the amended rule text of §83.6007 and §83.6008. In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

The adopted amendments to the consumer disclosures include changes based on oral precomments made at the stakeholders meeting on the proposed rules. Two precommenters suggested that the annual percentage rate should be more prominent than the interest rate paid to the third-party lender, and that the interest rate should be disclosed below the dollar amount of interest. In response to this precomment, the interest rate has been placed near the dollar amount of interest. One precommenter also suggested that for the multiple-payment disclosures, the disclosure should include the total amount of fees and interest the consumer would pay at the end of the term of the loan, in addition to the amounts for two weeks, one month, two months, and three months. In response to this precomment, the multiple-payment disclosures include an additional row with

this information. Credit access businesses may omit this extra row if the loan term is two weeks, one month, two months, or three months, and they may move the extra row if the loan term falls in between one of the other periods.

In §83.6008, concerning Permissible Changes, the adopted amendments include an updated citation to Regulation Z. In addition, new subsection (a)(6) specifies that the disclosure may include a form number, and new subsection (b) specifies that the credit access business may make changes to the consumer disclosure that the OCCC approves in writing.

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are adopted under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting. The amendments to §83.6005 are adopted under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are adopted under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

*§83.3003. Transfer of License; New License Application on Transfer of Ownership.*  
**{{This section will replace the current section 83.3003, which will be 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) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) 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.

(3) 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 §83.3004 of this title (relating to Change in Form or Proportionate Ownership). 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 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 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.

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

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

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. 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 credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business 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 §83.3002 of this title. The instructions in §83.3002 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 §83.3002 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 as a credit access business. 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 §83.3007(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 credit access business activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business 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 credit access business 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 credit access business activity and before the OCCC's final approval of the license transfer.

*§83.3004. 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 §83.3003 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 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(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 10 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 §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a transfer application may be required under §83.3003 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 §83.3003 of this title.

*§83.5001. Data Reporting Requirements.*

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) - (d) (No change.)

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file one or more complete, accurate, and timely quarterly or annual reports.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly and wilfully violates Texas Finance Code, §393.627 or this section. In addition, as provided by Texas Finance Code, §14.208(c), the OCCC may assess an administrative penalty against a licensee that violates an injunction described by paragraph (1).

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the administrative penalty is \$100 for each licensed location.

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A), then the administrative penalty is \$500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this

section during any of the four quarters following a second violation described by subparagraph (B), then the administrative penalty is \$1,000 for each licensed location. The \$1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(3) Suspension or revocation for fourth or subsequent violation. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(2)(C), then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

§83.6003. *Posting of Fee Schedule and Notices.*

(a) In-person sales. A credit access business must prominently display the following in the licensee's office in a conspicuous location visible to the general public:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) the following OCCC [consumer credit] notice: "This business is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the business, 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. Email: consumer.complaints@occc.texas.gov."  
~~["This business is licensed and examined by the State of Texas Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, consumer.complaints@occc.state.tx.us, www.occc.state.tx.us."]; and~~

(3) the notice required by Texas Finance Code, §393.222(a)(3).

(b) Internet sales. For business conducted through the Internet, a credit access business must prominently display the information provided in subsection (a) of this section in a conspicuous location on the business's website and on any website where the business advertises to the public.

(1) Direct link for fee schedule. The posting required by subsection (a)(1) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Fee Schedule" or "Schedule of All Fees."

(2) Direct link for OCCC [consumer credit] notice. The posting required by subsection (a)(2) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "OCCC Notice" or "Consumer Credit Notice." ~~["Consumer Credit Notice," "OCCC Notice," or "Complaints and Inquiries Notice."]~~

§83.6006. *Format.*

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

(c) The consumer disclosure for each product offered under Texas Finance Code, Chapter 393 must be provided to consumers as a separate document. Each product disclosure must fit on one standard-size sheet of paper (8 1/2 by 11 inches), printed on one side [~~both sides, or on two standard sheets of paper printed only on the front sides of each page~~].

*§83.6007. Consumer Disclosures.*

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC 83.6007(a) *{See attached amendments.}*

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC 83.6007(b) *{See attached amendments.}*

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC 83.6007(c) *{See attached amendments.}*

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC 83.6007(d) *{See attached amendments.}*

(e) - (f) (No change.)

*§83.6008. Permissible Changes.*

(a) A credit access business must use the required disclosures under Texas Finance Code, §393.223 as prescribed by Figures: 7 TAC §83.6007(a) - (d) of this title (relating to Consumer Disclosures), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Filling in any dollar amounts, interest rates, or other terms specific to the three to five most common loans for each of the products offered by the credit access business;

(2) Substituting the pronouns used to denote the consumer by substituting words such as "you" and "your" for "I" and "my," along with appropriate grammatical changes;

(3) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the consumer: "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to

signing any contract for a payday or auto title loan, this \_\_\_ day of \_\_\_\_\_, 20\_\_."

(4) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure regarding military borrowers under 10 U.S.C. §987 and 32 C.F.R. Part 232;

(5) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure requirements for advertising under the Truth in Lending Act, 15 U.S.C. §1632(a), and Regulation Z, 12 C.F.R. §1026.24; [its implementing regulations, 12 C.F.R. §226.24.]

(6) a form number indicating the version of the form, the date the form was produced, or both.

(b) A credit access business may make changes other than those specified in subsection (a) only if the OCCC has approved the changes in writing.

(c) [~~(b)~~] The permissible changes allowed by this section must not result in decreasing a font size by more than one point or a chart size by more than 10% from the required disclosure. Permissible changes cannot otherwise interfere with the presentation or layout of the disclosed information.

### **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 February 19, 2016.

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

**CAB NAME HERE** sample data for illustration only

## Payday Loan

\$  , One Payment

## Cost Disclosure

### Cost of this loan:

<b>Borrowed amount</b> (cash advance)	\$ <input type="text" value="500.00"/>
<b>Interest paid to lender</b> (interest rate: <input type="text" value="10"/> %)	\$ <input type="text" value="2.40"/>
<b>Fees paid to</b> <input type="text" value="CAB name here"/>	\$ <input type="text" value="125.00"/>
<b>Total of payments</b> (if I pay on time)	\$ <input type="text" value="627.40"/>

<b>APR</b> (cost of credit as a yearly rate)	<input type="text" value="664.30"/> %
<b>Term of loan</b>	<input type="text" value="2 weeks"/>

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ <input type="text" value="127.40"/>	\$ <input type="text" value="627.40"/>
1 Month	\$ <input type="text" value="254.80"/>	\$ <input type="text" value="754.80"/>
2 Months	\$ <input type="text" value="509.60"/>	\$ <input type="text" value="1,009.60"/>
3 Months	\$ <input type="text" value="734.40"/>	\$ <input type="text" value="1,234.40"/>

### Cost of other types of loans:



### Repayment:

Of 10 people who get a new single-payment payday loan:	
	3½ will pay the loan on time as scheduled (typically 30 days)
	1 will renew 1 time before paying off the loan
	2 will renew 2 to 4 times before paying off the loan
	3½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCC.

### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).
- Visit [occc.texas.gov](http://occc.texas.gov) for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

**CAB NAME HERE**

sample data for illustration only

### Payday Loan

\$  ,  Payments

### Cost Disclosure

#### Cost of this loan:

<b>Borrowed amount</b> (cash advance)	\$ <input type="text" value="500.00"/>
<b>Interest paid to lender</b> (interest rate: <input type="text" value="10"/> %)	\$ <input type="text" value="26.00"/>
<b>Fees paid to</b> <input type="text" value="CAB name here"/>	\$ <input type="text" value="775.00"/>
<b>Payment amounts</b> (payments due every <input type="text" value="2 weeks"/> )	Payments #1-# <input type="text" value="9"/> \$ <input type="text" value="136.24"/> (Final) Payment # <input type="text" value="10"/> \$ <input type="text" value="74.84"/>
<b>Total of payments</b> (if I pay on time)	\$ <input type="text" value="1,301.00"/>

<b>APR</b> (cost of credit as a yearly rate)	<input type="text" value="614.51"/> %
<b>Term of loan</b>	<input type="text" value="20 weeks"/>

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ <input type="text" value="779.89"/>	\$ <input type="text" value="1,279.89"/>
1 Month	\$ <input type="text" value="784.28"/>	\$ <input type="text" value="1,284.28"/>
2 Months	\$ <input type="text" value="791.53"/>	\$ <input type="text" value="1,291.53"/>
3 Months	\$ <input type="text" value="796.74"/>	\$ <input type="text" value="1,296.74"/>
20 Weeks	\$ <input type="text" value="801.00"/>	\$ <input type="text" value="1,301.00"/>

#### Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	16%	30%	89%	180%	229%	410%	Average APR
	\$1.32	\$3.51	\$12.52	\$15.00	\$18.85	\$33.72	Average fees & interest per \$100 borrowed over 1 month

#### Repayment:

Of 10 people who get a new multi-payment payday loan:

	7 will pay the loan on time as scheduled (typically 5 months)
	1 will renew 1 to 4 times before paying off the loan
	2 will renew 5 or more times or will never pay off the loan.

This data is from 2014 reports to the OCCC.

#### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

#### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).
- Visit [occc.texas.gov](http://occc.texas.gov) for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

**CAB NAME HERE**

sample data for illustration only

**Auto Title Loan**

**\$500**, One Payment  
**Cost Disclosure**



**You can lose your car.**

If you miss a payment or make a late payment, your car can be repossessed.

**Cost of this loan:**

<b>Borrowed amount</b> (cash advance)	\$ 500.00
<b>Interest</b> paid to lender (interest rate: 10%)	\$ 5.41
<b>Fees</b> paid to CAB name here (includes a one-time \$33 title fee)	\$ 158.00
<b>Total of payments</b> (if I pay on time)	\$ 663.41

<b>APR</b> (cost of credit as a yearly rate)	297.68 %
<b>Term of loan</b>	1 month

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ 160.52	\$ 660.52
1 Month	\$ 163.41	\$ 663.41
2 Months	\$ 293.61	\$ 793.61
3 Months	\$ 423.81	\$ 923.81

**Cost of other types of loans:**



**Repayment:**

Of 10 people who get a new multi-payment auto title loan:

	3 will pay the loan on time as scheduled (typically 30 days)
	1 will renew 1 time before paying off the loan
	1½ will renew 2 to 4 times before paying off the loan
	4 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

**Before getting this loan, ask yourself:**

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

**OCCC notice:**

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).
- Visit [occc.texas.gov](http://occc.texas.gov) for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

**CAB NAME HERE** sample data for illustration only

### Auto Title Loan

\$500, 11 Payments

### Cost Disclosure



**You can lose your car.**

If you miss a payment or make a late payment, your car can be repossessed.

### Cost of this loan:

<b>Borrowed amount</b> (cash advance)	\$ 500.00
<b>Interest paid to lender</b> (interest rate: 10%)	\$ 30.29
<b>Fees paid to</b> CAB name here (includes a one-time \$33 title fee)	\$ 868.00
<b>Payment amounts</b> (payments due every 2 weeks)	Payments #1-#10 \$ 132.45 (Final) Payment #11 \$ 74.07
<b>Total of payments</b> (if I pay on time)	\$ 1,398.57

<b>APR</b> (cost of credit as a yearly rate)	564.57	%
<b>Term of Loan</b>	22 weeks	

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ 873.25	\$ 1,373.25
1 Month	\$ 878.01	\$ 1,378.01
2 Months	\$ 886.06	\$ 1,386.06
3 Months	\$ 892.13	\$ 1,392.13
22 Weeks	\$ 898.29	\$ 1,398.57

### Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	16%	30%	89%	180%	229%	410%	Average APR
	\$1.32	\$3.51	\$12.52	\$15.00	\$18.85	\$33.72	Average fees & interest per \$100 borrowed over 1 month

### Repayment:

Of 10 people who get a new multi-payment auto title loan:

	5 ½ will pay the loan on time as scheduled (typically 6 months)
	1 will renew 1 time before paying off the loan
	1 will renew 2 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

### Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan *in full* when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

### OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).
- Visit [occc.texas.gov](http://occc.texas.gov) for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.



Date: January 30, 2016

To: Office of Consumer Credit Commissioner

From: Consumer Service Alliance of Texas

Re: CSAT Comments to Proposed Rule Amendments from rule review of 7 TAC, Part 5, Chapter 83, Subchapter B regarding rules for Credit Access Businesses (Part 2 – license transfers, data reports and disclosures)

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These comments are provided by the Consumer Service Alliance of Texas (“CSAT”) on the proposed rule amendments from rule review of 7 TAC, Part 5, Chapter 83, Subchapter B regarding rules for credit access businesses (Part 2).

CSAT appreciates the consideration given to comments at the stakeholders’ meeting and the comments to the pre-comment draft of the rules. We also appreciate the opportunity to participate in the rulemaking process and is available to answer any questions the Office of the Consumer Credit Commission (“OCCC”) may have about these comments.

#### **Information about CSAT**

CSAT is a non-profit trade association that advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. CSAT represents the interests of consumers and credit access businesses (“CABs”) in Texas.

CABs provide retail financial products and services to Texas consumers. From stores in neighborhoods across the state, hardworking Texans have access to small, short-term loans; auto-title loans; money orders; pre-paid telephone and debit cards; and other services to help them manage their finances.

One of the services CABs provide is securing an independent third-party lender for customers who need access to credit to meet their immediate financial needs. CABs do not directly provide loans to consumers.

CSAT’s mission is to work cooperatively with industry, consumers, and government officials to help ensure Texans have access to short-term loans and other financial service products in compliance with the law.

### CSAT Comments

In a proposed rule, the OCCC has proposed new regulations regarding license transfers, data reporting and disclosures.

#### 83.3003(f) Permission to operate.

The proposed rule includes “A request for permission to operate may be denied even if the application contains all of the required information”. The proposed rule is overly broad. No guidelines are given for a denial. Reasons for denying a request for permission to operate fall into broad categories, such as current enforcement problems, issues with management or ownership, etc... Those categories should be spelled out in the proposed rule. A rule that gives an agency absolute discretion to deny an application to continue to provide service to consumers in bankruptcy or emergency situations will inhibit purchases and transfers --- and reduce access to credit.

Purchase agreements, particularly ones in distressed circumstances, often include provisions enabling the buyer to begin operating the purchased locations immediately. Sellers typically have little, or no, interest in continuing to incur the overhead expense of operating stores that have been sold. Providing specificity to potential purchasers and sellers would help shape deal terms to protect consumers with outstanding loan obligations.

#### 83.3003(g) Transferee’s authority to engage in business.

The proposed rule states a transferee must “immediately cease doing business” if the OCCC denies the request for permission to operate... To protect customers of stores that have been purchased, we suggest the agency consider a time frame to approve “permission to operate” requests. A time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making a decision before the deadline would give purchasers and sellers guidelines to use when structuring sales. It is disruptive for consumers with outstanding loan transactions to have the buyer’s employees assume operational responsibility for a store, only to have a subsequent decision by the agency require the seller to “re-staff” the store temporarily.

#### 83.5001(a) Data Reporting Requirements.

The proposed rule includes a new sentence at the conclusion of paragraph (a) stating, “All information provided on each quarterly or annual report must be accurate”. Given recent changes to municipal ordinances and anticipated comprehensive federal regulations, we suggest an amendment to the new sentence adding, “and consistent with all requirements in this section notwithstanding other requirements imposed by other authorities”. Finance Code Chapter 393 and 7 TAC section 83.5001 contain the state credit access business data reporting requirements. The agency has published instructions, and provided guidance through webinars and meetings about instructions for filing the data reports.

Recent amendments to municipal ordinances indicate cities may implement their own credit access business data reports. The Consumer Financial Protection Bureau has announced it will be publishing comprehensive payday and motor vehicle title rules in the first calendar quarter of 2016 that will likely include data reporting. Local and federal rules may conflict with state reporting instructions. We seek to avoid difficulties with overlapping regulatory structures by clarifying that the Texas statutes and rules are designed for its data collection purposes.

**Implementation Period**

In response to the agency's request for comment on implementation dates for use of the new consumer disclosure forms by CABs that order preprinted forms, we recommend a September 1, 2016 date. A September date should give CABs ample time to dispose of exiting form inventory and to order updated forms.

For CABs not using preprinted, fill-in-the-blank forms, we suggest an implementation date of 30 days after the effective date of the rule. In the commentary to the proposed rule, the agency estimated "a programming time of less than five hours to produce the updated forms". It is unreasonable to anticipate reprogramming work could be scheduled and accomplished in such a short period of time --- perhaps for the agencies very capable staff, but not for the industry.

**For More Information**

For more information about these comments by CSAT, please contact the following: Robert W. Norcross, Jr., Vianovo, LP, 2225 W. Southlake Blvd., Suite 423, Southlake, Texas 76092, telephone 817-491-7110, fax 817-719-9200, email REDACTED.

## **D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

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

**PURPOSE:** The purpose of the adoption regarding these rules for crafted precious metal dealers is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The proposed amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 85, Subchapter B with changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve the amendments to 7 TAC, Chapter 85, Subchapter B.

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 85. Pawnshops and Crafted Precious Metal Dealers*  
*Subchapter B. Rules for Crafted Precious Metal Dealers*

The Finance Commission of Texas (commission) adopts amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC, Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

The commission adopts the amendments to §85.1001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23). These changes are being made in order to make a technical correction to a citation contained in a definition.

The commission adopts the amendments to §85.1009 and 85.2001 without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The adopted amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated

agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction has been made to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" has been inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintains a police department, and to the sheriff of the county if the transaction occurs in another location.

Since the proposal, a technical correction has been made in §85.1001(2), amending the Texas Occupations Code citation contained in the definition of "Crafted precious metal." The revised citation refers to §1956.051(3) in order to correct an accidental transposition of two numbers.

In §85.1009, concerning Revocation, an amendment is provided in subsection (b) to

update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

The commission previously adopted amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted reads: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two amendments regarding recently revised information. The first amendment in subsection (a)(8) corresponds to 2015 legislation, and the second in subsection (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid

form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities . . . because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session. HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses. HB 910 went into effect on January 1, 2016.

As a result, the amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: [occc.texas.gov](http://occc.texas.gov) and [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov). In order to provide consumers with the best contact information for the agency, this

**ADOPT AMENDMENTS**  
**7 TAC, CHAPTER 85, SUBCHAPTER B**  
**Page 3 of 4**

adoption amends §85.2001(a)(13) with the OCCC's updated contact information.

The amendments are adopted under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

*§85.1001. Definitions.*

The following terms, when used in this subchapter, have the following meanings:

(1) (No change.)

(2) Crafted precious metal--Has the meaning provided by Texas Occupations Code, §1956.051(3) [~~§1965.051(3)~~]. The term does not include a coin, a bar, a commemorative medallion, an item that contains incidental or trace amounts of precious metal, or an item that is purchased by a dealer for 105% or more of the item's scrap value.

(3) (No change.)

(4) Local law enforcement.

(A) (No change.)

(B) For mail order or Internet sales, local law enforcement is:

(i) (No change.)

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) (No change.)

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

(5) - (10) (No change.)

*§85.1009. Revocation.*

(a) (No change.)

(b) Upon receiving notice of revocation under this section, an affected person may request a hearing before the OCCC. The hearing will be conducted 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). [~~as provided in Texas Government Code, Chapter 2001, and Part 1, Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).~~]

*§85.2001. Transaction Report Form and Records.*

(a) Required elements. For each transaction in which a dealer purchases crafted precious metal, the dealer must prepare a transaction report form. The report form must be preprinted and prenumbered

and must contain the following required elements:

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

(8) the seller's driver's license number, ~~[or]~~ personal identification certificate number, or handgun license number;

(9) - (12) (No change.)

(13) the following notice: "This business is registered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against this business may contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov). ~~[consumer.complaints@occc.state.tx.us.]~~ Website: [occc.texas.gov](http://occc.texas.gov). ~~[www.occc.state.tx.us.]~~"

(b) - (c) (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 February 19, 2016.

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

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**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

4. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 84, Concerning Motor Vehicle Installment Sales

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 84. The notice of the review was published in the *Texas Register* as required on January 15, 2016 (41 TexReg 637). 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. Rule changes to Chapter 84 are being separately presented for proposal.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve and adopt the rule review of Chapter 84, as the reasons for these rules continue to exist.

**RECOMMENDED MOTION:** I move that we find that the reasons for adopting Chapter 84 continue to exist and that the rules are repropose and readopted.

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

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 84, concerning Motor Vehicle Installment Sales. Chapter 84 contains Subchapter A, concerning General Provisions (§§84.101 - 84.105); Subchapter B, concerning Retail Installment Contract (§§84.201 - 84.205); Subchapter C, concerning Insurance and Debt Cancellation Agreements (§§84.301 - 84.308); Subchapter D, concerning Acquisition of Contract or Balance (§84.401); Subchapter E, concerning Holder's Rights, Duties, and Limitations (§§84.501, 84.503, and 84.504); Subchapter F, concerning Licensing (§§84.601 - 84.616); Subchapter G, concerning Examinations (§§84.702 - 84.709); and Subchapter H, concerning Retail Installment Sales Contract Provisions (§§84.801 - 84.809). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 84 was published in the *Texas Register* as required on January 15, 2016 (41 TexReg 637). 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 Office of Consumer Credit Commissioner, the agency that administers these rules, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing rule changes to Chapter 84, as published elsewhere in this issue of the *Texas Register*.

Subject to the concurrently proposed rule changes to Chapter 84, 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 84.

## **D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

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

**PURPOSE:** The purpose of the proposal 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 proposed 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 proposed for repeal 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 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment 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) proposes amendments, new rules, and repeals in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. The proposed amendments 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.

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

The proposed 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 proposed for repeal 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 have been incorporated into this 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*

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

Proposed amendments throughout §84.201 provide updated internal references and citations. Additionally, in Figure §84.201(d)(2)(B)(iii), a proposed 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 proposal 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 proposal removes a sentence from subsection (a) to conform to amendments to subsection (d)(3).

In the proposed amendments to subsection (b), the rule's current requirement to provide a deferment notice to the buyer is 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 if the proposed amendments are adopted.

The proposal deletes current subsection (c), which deals with the content of the deferment notice, because the proposal replaces this provision with a requirement to provide a deferment agreement containing similar information in subsection (b). Subsection (d) of the proposal 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. Proposed 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 proposal deletes current subsections (f) and (g), dealing with accrual of time price differential and accounting of payments, because the proposal replaces these provisions with amended provisions in subsection (d). The proposal 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.

## *II. Documentary fees*

Section 84.205, which relates to documentary fees, is proposed for repeal and replacement with a new rule. Currently, Section 84.205 describes the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and describes the criteria that the Office of Consumer Credit Commissioner (OCCC) uses to determine whether a documentary fee is reasonable. The proposed new rule largely maintains the current 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, including costs to comply with recent electronic titling requirements of the Texas Department of Motor Vehicles (TxDMV). 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. One precommenter asked whether a seller would comply with the notification requirement if it sent a written notification in a format other than the form prescribed by the OCCC (e.g., a letter sent to the OCCC by certified mail). 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. However, 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.

Paragraph (4) describes the requirements for filing a documentary fee notice upon a transfer of ownership between businesses. The proposed 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 proposed 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 proposal 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 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 proposed rule text would 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 proposed rule to describe the agreed order process. Regarding the second precommenter's argument that the OCCC should be limited to an administrative penalty in this situation, the proposed rule's restitution provisions are consistent with the OCCC's 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 proposed 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 proposed 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 proposed timing requirement is appropriate.

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. In order to clarify this requirement, the following sentence has been added to paragraph (3)(B)(i)(II): "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."

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 days/year  $\times$  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  $\times$  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 commenter 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." While the agency understands the argument as it may apply to determining general overhead allocation, the agency disagrees with the argument as it applies to allocating *direct* costs to the documentary fee. As a general matter, the documentary fee should only include costs that are directly related to processing documents. Conversely, overhead costs, generally considered indirect 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.

Paragraph (3)(B)(v) also explains that the documentary fee may not include any depreciation of facilities costs. One precommenter asked about the purpose of this requirement. Depreciation is a non-cash expense with an income tax benefit, and it is used as a tool for orderly accounting. Depreciation is an indirect expense, rather than a cost actually paid by a seller to process documents. For this reason, the agency believes that it is appropriate for the rule to exclude depreciation of facilities costs.

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.

### *III. Debt cancellation agreements*

The proposal 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 proposed 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*

A proposed 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 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §84.604 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule

largely maintains the requirements under the current 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 are proposed corresponding to proposed 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.

Proposed 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. Proposed 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. Proposed 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.

Proposed 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).

A proposed 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 proposal 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 proposal specifies that this information is confidential because it is collected under the OCCC's examination authority. The proposal 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, the OCCC currently has no way to 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.

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. The agency invites official comments on the types of financial information that Chapter 348 licensees currently maintain, and any procedures that would be necessary to correctly calculate the dollar volume and number of contracts originated, acquired, or serviced. 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. The agency invites official comments on whether this is an appropriate measure of dollar volume.

Proposed 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 would replace the current §84.613 and §84.614, which are proposed for repeal. 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)(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*

Proposed 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 proposed in §84.708(e)(2)(P) and §84.709(e)(2)(H).

The proposal 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 proposal 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 proposed in the model retail installment sales contract for Chapter 348 transactions at figure 7 TAC §84.809(b).

*VI. Fiscal implications, public benefits, & costs*

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In particular, the

rules being repealed and replaced with new, reorganized rules will provide more guidance and clarity to motor vehicle sales finance licensees.

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 §84.205 regarding documentary fees (repeal and replace), new §84.309 concerning debt cancellation agreements, and new subsection (e) of §84.611 relating to the annual renewal statement.

Regarding §84.205, Documentary Fees, it is important to note that a licensee is not required to increase its documentary fee. Licensees may charge a \$50 documentary fee without filing any notice or incurring any costs. Further, numerous licensees have filed for a documentary fee increase under the current rule and would also not be compelled by the statute or the rule to file for an additional increase.

For those licensees who elect to file for a documentary fee increase under the procedures outlined in the proposed rule, there may be additional economic costs incurred. To properly consider the potential costs of this rule, a review of the purposes of the revised rule is beneficial. The proposal would repeal the current rule and replace it with a new rule. The purposes of the proposed new rule are three-fold: (1) to raise the documentary fee amount that is presumed reasonable from \$125 to \$150; (2) to codify several existing policies used by the agency in accepting notifications and in reviewing cost analyses; and (3) to specify the format of the cost analysis for documentary fee filings over \$150.

For licensees unfamiliar with the existing policies being codified in the rule, the anticipated costs would include expenses related to employee training to review the documentary fee filing procedure, to prepare and submit the notification, and to prepare and submit a cost analysis, if applicable. These costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to file notice of an increased documentary fee. Any labor costs incurred would be minimal for licensees filing at or below the proposed amount that is presumed reasonable, which would not require a cost analysis. Moreover, the OCCC is streamlining its online documentary fee filing procedures, providing a standard form, and proposing guidance in the rule for the cost analysis, all of which will increase efficiency and further reduce time and expense for licensees.

Licensees will have the ability to offset the anticipated costs of these proposed rule changes due to an increased documentary fee. As noted earlier, the proposed new rule would increase the documentary fee amount that is presumed reasonable from \$125 to \$150. Should this new amount become effective, any licensees that fulfill the streamlined process to file for \$150 would experience a cost benefit in the amount of increase over their current filing.

Concerning the proposed annual renewal statement in §84.611(e), there may be additional economic costs incurred by a person required to comply with this provision. The potential costs of this rule amendment should be considered in conjunction with its purposes. First, the annual renewal statement would help the OCCC schedule examinations by providing

information about the size of licensees, as well as scope and risk factors. Second, it 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.

All licensees would be required to file the annual renewal statement under proposed §84.611(e) should it become effective. The anticipated costs would include expenses related to employee training to prepare the necessary data and to complete the annual statement, as well as any software programming that may be required to provide the requested information. The labor costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to submit the annual renewal statement.

It is anticipated that any labor costs incurred would be minimal, as the annual renewal statement is expected to be a simple, online form requesting less than 10 pieces of information.

Some licensees who use or lease specialized computer software programs for their business may experience some additional costs. These costs are impossible to predict. However, it is the agency's understanding that the vast majority of licensee software programs have the ability to run a report that will produce the information for the proposed annual renewal statement. It is also the agency's understanding that licensees need this information to correctly calculate their revenues for income-tax purposes.

In reference to §84.309, Debt Cancellation Agreements Requiring Insurance, it is important to note that debt cancellation agreements are an optional product. Licensees have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those licensees.

In part, the purpose of proposed new §84.309 is to require form submitters to pay a \$250 submission fee. 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 OCCC believes that this fee is necessary and prudent to recover the cost of the agency's resources to review these agreements within the 45-day statutory deadline.

For licensees who opt to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, there would be initial economic costs incurred consisting of the proposed \$250 submission fee in §84.309(c). However, the fees commonly charged in conjunction with debt cancellation agreements are anticipated to cover the submission fee proposed in the rule. Hence, the fees that licensees may charge customers for a debt cancellation agreement are anticipated to offset the submission fee costs as proposed, resulting in a neutral cost to persons who are required to comply with the new debt cancellation rule.

Regarding the proposed rule changes contained in §84.102 and §84.203 relating to deferment charges and time price differential, any costs are imposed by statutory requirements and not the proposed rules. If some licensees are inappropriately charging deferment charges, those

unauthorized charges are impermissible under Texas Finance Code, §348.114. If some licensees are not properly sending written agreements to document deferments, those agreements are required by Texas Finance Code, §348.116. This proposal serves to clarify the existing statutes. Therefore, for any licensees that may need to alter their practices to comply with the statutory requirements, any resulting costs are imposed by the statutes and not these proposed rule changes.

For the remaining proposed rule changes contained in §§84.601, 84.602, 84.604, 84.605, 84.607, 84.610, 84.611(c) and (f), 84.613, and 84.614 (licensing processes); and §§84.201, 84.708, 84.709, 84.804, 84.808, and 84.809 (technical corrections), there is no anticipated cost to persons who are required to comply with the changes to these rules as proposed.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. Aside from the previously outlined costs to comply with the clarified documentary fee procedures, the new annual renewal statement, and the optional debt cancellation submission fees, there will be no other effects on individuals required to comply with the rule changes as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the

proposal while minimizing adverse impacts on small businesses.

*VII. Comments & statutory authority*

Comments on the proposal 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](mailto: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 proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

All of the amendments, new rules, and repeals are proposed 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 proposed 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 proposed 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 proposed fee in §84.309(c) and the proposed 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 proposed 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

(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.

(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.

(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 will replace the current section 84.205, which will be 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 described 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). 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 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).

(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);

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(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. 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 will replace the current section 84.604, which will be 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.

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(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.)

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(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 licensee must provide the statement at the time of filing the renewal. 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 would replace sections 84.613 and 84.614, both of which would be 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) Obtaining or originating 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, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 19, 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%	<del>24.6341%</del>
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. \_\_\_\_\_

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

**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 [Alternative caption: "prior credit or lease balance"] 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 [Optional addition: (if not included in cash price)]	\$ _____
H. Sales tax [Optional addition: (if not included in cash price)]	\$ _____
I. Other taxes [Optional addition: (if not included in cash price)]	\$ _____
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. <b>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.]</b>	\$ _____
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. <b>Amount Financed</b> (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."]

<b>DEFERRED DOWNPAYMENT(S)</b>	
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 A<sub>1</sub>: 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 A<sub>2</sub>: 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 A<sub>1</sub>: 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 A<sub>2</sub>: 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 A<sub>1</sub>: 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 A<sub>2</sub>: 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.



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.