

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATES.....**February 20, 2015**

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

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

FUTURE MEETING DATESApril 17, 2015
June 19, 2015
August 21, 2015
October 16, 2015
December 18, 2015

*** 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 20, 2015
9:00 a.m. or Upon Adjournment of the
Audit Committee Meeting
Whichever is Later

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, D2, and D3.

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 12, 2014, 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, 2014, Investment Officer Reports
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2015 First Quarter Financial Statements
6. Discussion of and Possible Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
7. Discussion of and Possible 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 Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation

B. 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 Amendments to 7 TAC §3.92, Concerning User Safety at Unmanned Teller Machines
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.91 Concerning Loan Production Offices
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §3.23 Concerning Exercise of Trust Powers
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §33.52 Concerning How to Provide Information to Customers about Filing a Complaint
6. 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. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas.

Department of Banking v. Greg Abbott, Attorney General of Texas; Cause No. D-1-GV-11-001906, In the 53rd District Court of Travis County, Texas.

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.

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) Recap of Problem Institutions/Enforcement Issues; and d) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; d) Mortgage Industry Advisory Committee Minutes; and e) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §67.17, Concerning User Safety at Unmanned Teller Machines
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §77.115, Concerning User Safety at Unmanned Teller Machines
6. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Khosrow Khani v. Texas SML; Cause No. D-1-GN-13-000207, 200th Judicial District Court of Travis County, Texas

Sammy Trantham v. Texas Department of Savings and Mortgage Lending and Caroline C. Jones; Cause No. D-1-GN-14-004497, 419th Judicial District Court of Travis County, Texas

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 Amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators***
3. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors***
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802, Concerning Property Tax Lenders
5. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

Note: The Finance Commission Committee 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 of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify Judy Schooling, Finance Commission of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

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**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, December 12, 2014**

The Finance Commission of Texas met Friday, December 12, 2014, in the Finance Commission Building, William F. Aldridge Hearing Room, 2601 North Lamar Boulevard, Austin, Texas.

Finance Commission Members in attendance:

Bill White, Chair
Paul Plunket, Vice Chair
Susan Burton
Victor Leal
Stacy London
Cindy Lyons
Lori McCool
Jonathan Newton
Larry Patton
Jay Shands

Finance Commission Members Absent:

Will Lucas

Others in attendance:

Charles G. Cooper, Executive Director of the Texas Finance Commission, and Commissioner, Texas Department of Banking (TXDOB)
Leslie Pettijohn, Commissioner, Office of Consumer Credit Commissioner (OCCC)
Caroline C. Jones, Commissioner, Texas Department of Savings and Mortgage Lending (TDSML)
Jim Crowson, Assistant Attorney General, Office of the Attorney General

Finance Commission Chairman Bill White announced a quorum with ten members present and called the meeting to order at 8:45 a.m.

Discussion of and Possible Vote to Excuse the Absence of a Commission Member

Chairman Bill White asked the members to excuse Will Lucas from the Finance Commission meeting held on December 12, 2014. A motion was made by Susan Burton to excuse Will Lucas. Stacy London seconded and the motion passed.

FINANCE COMMISSION MATTERS

General Public Comment

None

Consent Agenda

Stacy London made a motion to adopt the consent agenda, which includes items A1, A2, D3 and D4. Cindy Lyons seconded and the motion passed.

Finance Commission Operations

Commissioner Cooper reported that the 84th Legislative Session begins on January 13 at noon. Weekly bill tracking reports will be sent to the Finance Commission members beginning January 20 and each Monday thereafter.

Audit Committee Report

Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Fiscal Year 2015 Internal Auditor’s Risk Assessment and Audit Plan for the Finance Commission Agencies

Cindy Lyons, Audit Committee Chair, reported that the FY2015 Internal Audit Plan was discussed at the Audit Committee meeting. The areas to be audited are: DOB – revenue accounting and perpetual care cemeteries; TDSML – mortgage examinations; and OCCC – the Texas Financial Education Endowment Fund. The Audit Committee recommended that the Finance Commission approve the FY2015 Internal Audit Plan.

Coming upon recommendation from the Audit Committee, no second was needed and the motion passed.

Discussion of and Possible Vote to Adopt Amendments to 7 TAC, Part 8, Joint Financial Regulatory Agencies, §§153.1, 153.5, 153.15, and 153.51, Concerning Home Equity Lending

Matthew Nance, Assistant General Counsel for the OCCC, reported that this item was delayed from the October meeting. This rule amends the definition of interest and when a power of attorney may be used. The Credit Union Department previously adopted this rule.

Larry Patton made a motion to adopt the amendments. Jay Shands seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Annual Evaluations of the Commissioners of the Department of Savings and Mortgage Lending Office, the Consumer Credit Commissioner, and the Texas Department of Banking

There was discussion with voting on this agenda item.

Stacy London, Chair of the Strategic Planning Committee asked Bill White to stand in as ex officio for Will Lucas in order to make the third member. She stated that the Strategic Planning Committee conducted the annual reviews and compiled data for the agency commissioners and the Strategic Planning Committee recommends that the Finance Commission accept the very satisfactory annual reviews.

Victor Leal made a motion to accept the annual reviews of the three agency commissioners. Stacy London seconded and the motion passed.

Discussion of and Possible Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

There was no discussion or vote on this agenda item.

Discussion of and Possible 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

There was no discussion or vote on this agenda item.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys regarding pending and contemplated litigation

There was no discussion or vote on this agenda item.

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Recap of Problem Institutions/Enforcement Issues; and d) Other Items

Commissioner Jones updated the members on the thrift institutions stating that they are strong and assets continue to grow.

Jonathan Newton asked if the downturn in oil would affect the thrifts. Commissioner Jones replied that the Agency is monitoring interest rate risks and commercial real estate concentrations. The Agency has been in contact with banks that may be at risk in these areas. Commissioner Cooper added that he has asked the Federal Reserve to help determine lifting costs in specific fields that could affect the industry. The community banks are conservative in their loans, but the oil service industries need to be observed. The Texas economy is deep, but slumping oil prices may affect some areas.

Victor Leal mentioned that he spoke with a state representative recently and they are concerned about the drop in oil prices as it relates to the state budget, but the depth of the Texas economy is better than in the 80s and 90s.

Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; d) Mortgage Industry Advisory Committee Minutes; and e) Other Items

Commissioner Jones reported on the numbers of licensees and registrants as of November 30, 2014. Additionally, she reported as of November 30, 2014, more companies and individuals had gone through the license renewal process than at the same time the prior year. However, renewal time does not end until December 31, 2014, so final numbers are not available until then. Consumer complaints for the first two months of FY15 were lower than the same time period the previous fiscal year; however, it is too early in the year to consider that to be a trend. The Agency issued 680 orders for untimely filing of mortgage call reports and less than 60 have appealed. The Agency held its second annual Mortgage Industry Seminar on November 19th in conjunction with Texas Mortgage Bankers Association's Education Seminar. Senior management and field examination staff made presentations on timely topics. With regard to the upcoming legislative session, Commissioner Jones reported the bills the Agency is tracking as of December 3, 2014.

Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items

Commissioner Jones reported the Agency has prepared and submitted to oversight agencies multiple financial reports.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §67.17, Concerning User Safety at Unmanned Teller Machines

Ernest Garcia, General Counsel for the Texas Department of Savings and Mortgage Lending, gave an overview of rules 67.17 and 77.115. The amendments to these rules updates recommended basic safety precautions and eliminates the requirement for an annual notice. An institution must furnish the notice when an access device is issued, renewed or replaced.

Paul Plunket inquired about national best practices. Everette Jobe, Assistant General Counsel for the DOB, stated that these state requirements apply to national banks. He noted that there are no comparable federal laws and that the Credit Union Department made these change seven or eight years ago.

Stacy London made a motion to publish for comment, amendments to 7 TAC §67.17, Concerning User Safety at Unmanned Teller Machines. Susan Burton seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §77.115, Concerning User Safety at Unmanned Teller Machines

Jay Shands made a motion to publish for comment amendments to 7 TAC §77.115, Concerning User Safety at Unmanned Teller Machines. Larry Patton seconded and the motion passed.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Khosrow Khani v. Texas SML; Cause No. D-1-GN-13-000207, 200th Judicial District Court of Travis County, Texas

Sammy Trantham v. Texas Department of Savings and Mortgage Lending and Caroline C. Jones; Cause No. D-1-GN-14-004497, 419th Judicial District Court of Travis County, Texas

Stacy London commended Commissioner Jones for a job well done at the Mortgage Industry Day.

OFFICE OF CONSUMER CREDIT COMMISSIONER

Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Communication, HR and Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activity

Commissioner Leslie Pettijohn gave an update on operations and stated that the number of examination performed in FYTD15 is already proportionately higher than FYTD14. The agency has hired new examiners and once their training is complete, they will add to the examination productivity. Compliance is up for motor vehicles and credit access businesses, but there are still issues and concerns. Complaints were up primarily in motor vehicle sales finance.

Rudy Aguilar, Director of Consumer Protection, OCCC, gave an update on property tax complaints at the request of members from the October meeting. Most of the complaints were in the area of payoff disputes.

Paul Plunket asked for more detail and possible solutions to the problem.

Commissioner Pettijohn stated her belief that changes were not recommended at this time. Of the 15,000 transactions, 28 were complaints and, of those, only four had these issues. She continued with her operations briefing stating that the OCCC is encouraging businesses to use the online licensing platform. The OCCC is evaluating proposals for phase two of the IT legacy modernization project. Concerning litigation, oral arguments have been heard on the *Rowell* credit card surcharge case, but no decision has been issued. She finished up by stating that they have added several items to their legislative recommendations including clarifications on obtaining criminal history information, the proper investment standard for the endowment fund, and clarifications on the prohibitions on criminal charges and debt collection laws.

Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act

Commissioner Pettijohn stated that this item and the next are completed rule reviews and the agency recommends that the Finance Commission adopt both.

Jonathan Newton made a motion to adopt the completed rule review of 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act. Jay Shands seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors

Victor Leal made a motion to adopt the completed rule review of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors. Stacy London seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802, Concerning Property Tax Lenders

Commissioner Pettijohn explained that these rule amendments have generated significant stakeholder input and comments. Because of some late concerns and to ensure that Finance Commission is able to fully consider all comments, she suggested re-proposing and re-publishing the rules for an additional 30-day comment period.

Larry Patton made a motion to approve for re-publication amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802, Concerning Property Tax Lenders. Lori McCool seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators

Laurie Hobbs, Assistant General Counsel for the OCCC, briefed the members on this amendment stating that language was added giving the OCCC permission to refund the state's portion of these fees if deemed appropriate.

Susan Burton made a motion to publish for comment, amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators. Cindy Lyons seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors

Laurie Hobbs stated that this is a clean-up amendment to the rule because the agency no longer mails certificates to retailers.

Victor Leal made a motion to publish for comment amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors. Susan Burton seconded and the motion passed.

Victor Leal asked for an update on credit access businesses and municipalities adopting ordinances. Commissioner Pettijohn stated that roughly 20 municipalities have adopted ordinances to regulate payday lenders and credit access businesses within their districts. There has been some litigation from the industry and the agency will continue to have conversations with municipalities on the subject.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division

Chairman Bill White called for a recess at 10:08 a.m.

Chairman White reconvened the meeting at 10:23 a.m.

DEPARTMENT OF BANKING

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) Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activity; and i) General Items of Interest

Commissioner Charles Cooper, after introducing new Review Examiner Tanya Miller, stated that the Lame Duck Congress is winding down. The omnibus bill is in the Senate with a bill attached that requires the Federal Reserve to have a community banker or someone who has supervised a community bank to sit on their board. At the CSBS Board Meeting and Symposium, federal counterparts were invited for a dialogue in hopes to get a couple of bills passed, but to no avail.

Commissioner Cooper continued his update on operations stating that as of August 31, there were thirteen problem banks, but today it is down to ten.

Bob Bacon, Deputy Commissioner for DOB, gave an update on changes to the determination of past due examination dates. In the past, examinations were reported past due at a specific point in time, i.e. quarter end. Previously, if an examination was past due, but conducted during the quarter, it would not be reported as delinquent at quarter end. Under the revised process, this examination would be reported as past due for the quarter. This accumulative basis is considered more transparent.

Commissioner Cooper mentioned the well-received Executive Leadership on Cybersecurity (ELOC) meeting sponsored by IBAT and TBA. Over 300 bankers attended and Deputy Secretary of the Treasury, Sarah Bloom Raskin spoke about cyberthreats to the banking industry. Commissioner Cooper added that Phillip Hinkle, Director of IT Security Examinations at the DOB is key in keeping the DOB at the forefront of cybersecurity.

Larry Patton stated that it was obvious Texas was taking the lead through CSBS, and that Commissioner Cooper is recognized as a national leader in this effort.

The Commissioner continued with his update stating that Farmers National Bank of Newcastle became the latest national bank to convert to a state bank. A recent supervisory memorandum on money transmission license holders was issued that establishes criteria for determining an authorized delegate.

Catherine Reyer, General Counsel of the DOB, gave an update on various pending litigation.

Discussion of and Possible Vote to Take Action on the appointment of Wallace Jones to serve as the Trust-Funded Guaranty Fund Industry Representative for the period January 1, 2015 to December 31, 2017

Stacy London made a motion to appoint Wallace Jones to serve as the Trust-Funded Guaranty Fund Industry Representative. Susan Burton seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.92, Concerning User Safety at Unmanned Teller Machines

Stacy London made a motion to publish for comment amendments to 7 TAC §3.92, Concerning User Safety at Unmanned Teller Machines. Cindy Lyons seconded and the motion passed.

Discussion of and Possible Action Regarding Anticipated and Pending 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.

Department of Banking v. Greg Abbott, Attorney General of Texas; Cause No. D-1-GV-11-001906, In the 53rd District Court of Travis County, Texas.

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

Chairman Bill White called for an Executive Session at 10:45 a.m.

Chairman Bill White reconvened the Open Meeting of the Finance Commission at 12:30 p.m.

There being no further business, Commission Chairman Bill White adjourned the meeting of the Finance Commission at 12:32 p.m.

William J. White, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Judy E. Schooling, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

February 20, 2015

A. Finance Commission Matters

1. Review and Approval of the Minutes of the December 12, 2014, Finance Commission Meeting

D. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors

Future Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
1. 7 TAC, Part 1, Chapter 3	Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.111 Concerning Confidential Information	4/17/2015 proposal	DOB
2. 7 TAC, Part 1, Chapter 3	Concerning Registration Requirement for Representative Offices of Foreign Banks	4/17/2015 proposal	DOB
3. 7 TAC, Part 2, Chapter 15	Concerning Requirements of branch locations	10/16/2015 proposal	DOB
4. 7 TAC, Chapters 84 & 90	Plain Language Contracts <i>Proposed Amendments</i> To update plain language non-standard contract submission procedures	4/17/2015 proposal	OCCC
5. 7 TAC, Chapters 83, 84, 85, 88, & 89	Licensing Streamlining Provisions <i>Proposed Amendments</i> To streamline licensing procedures and provide regulatory burden reduction	TBD 2015 proposal	OCCC

B.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
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To: Finance Commission Members
From: Kurt Purdom, Director of Bank & Trust Supervision
Date: February 6, 2015
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2015							
					8/31/2013		8/31/2014		11/30/2014		2/28/2015	
Industry Profile (# / Assets in billions)												
# Banks	283	\$202.6	273	\$225.2	266	\$228.4						
# Trust Co. (1)	21	\$27.0	21	\$40.5	21	\$41.3						
# FBA/FBB	10	\$82.1	10	\$93.6	10	\$92.0						
Examinations Performed												
Banks	145		125		24							
Trust Co.	35		32		9							
FBA/FBB	6		2		0							
Bank CAMELS (# / %)												
1	125	44.2%	128	46.9%	126	47.4%						
2	136	48.1%	132	48.3%	130	48.9%						
3, 4, & 5	22	7.8%	13	4.8%	10	3.7%						
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. As illustrated in the table above, the number of problem banks continues to contract and as of January 31, 2015, problem banks totaled 10. 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.

Administrative/Enforcement Actions <i>(Number outstanding as of the date indicated)</i>		FY 2015				
		8/31/2013	8/31/2014	11/30/2014	2/28/2015	5/31/2015
Banks Safety and Soundness						
Formal	12	5	3			
Informal	26	21	21			
Banks Bank Secrecy Act (BSA)						
Formal	0	0	1			
Informal	3	1	0			
Banks Information Technology (IT)						
Formal	0	0	0			
Informal	2	4	3			
Trust Departments of Banks and Trust Companies						
Formal	0	0	0			
Informal	1	1	1			
Total Administrative/Enforcement Actions						
Formal	12	5	4			
Informal	32	27	25			
Total	44	32	29			

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 (Past Due Examinations) Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2014	FY 2015 <i>(YTD through 12/31/2014)</i>
Commercial Banks <i>(All / DOB Only)</i>	80% / 72%	92% / 90%
IT	89% / 87%	94% / 95%
Trust	94% / 94%	100% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	97%	90%
IT	93%	100%

The Department has changed its method of tracking and reporting past due examinations. Beginning September 1, 2014, a cumulative percentage of examinations conducted within the Department's policy guidelines, during the fiscal period indicated, are reported. In the past, only the entities that were past due for an on-site examination at the end of each month were reported as past due. We believe that this new reporting method will provide a better representation of the number of examinations that were conducted within our policy guidelines during the reporting period.

Division Highlights

Oil and Gas Exposure: Division staff contacted a number of Texas banks that are active in oil and gas lending in an effort to better gauge the impact that declining oil and gas commodity prices will have on the Texas banking system. These contacts were followed up with a questionnaire to approximately 20 institutions to obtain more detailed information. Questionnaire responses will be used to determine if on-site examinations or additional follow-up is necessary.

- Regional Office Facilities: The Department was notified that the leased building where the Arlington Regional Office is located does not meet all applicable fire codes. Division staff is currently exploring options to move the regional office to a new location.
- Special Operations and Conferences:
 - On December 3, 2014, the Department, in partnership with the Texas Bankers Association and the Independent Bankers Association of Texas (IBAT), held a cybersecurity summit in Austin for bank executive officers. The summit, which was facilitated by CSBS, was the first of many planned events to be held across the United States. The event brought together more than 300 bank chief executive officers (CEOs), senior executives and board members to learn about the potential cyber threats facing their institution. Commissioner Cooper gave the opening remarks where he reiterated the summit's primary theme that cybersecurity can no longer be a back room issue for the IT staff to handle but an issue for senior executives. Deputy Treasury Secretary Sarah Bloom Raskin delivered the keynote address stressing the importance of CEOs getting involved in the cybersecurity management at their banks. The summit, which was called "Executive Leadership of Cybersecurity," stressed a goal for community bank CEOs and senior executive leadership to walk away more informed about the current cyber threat landscape, steps that bank executives could take in managing their bank's cybersecurity, and information sharing resources that are available to them. More information about this event can be found on the Texas Bankers Electronic Crimes Task Force website: <http://www.ectf.dob.texas.gov/eloc.html>
 - Commissioner Cooper, Director Purdom, Review Examiner Whitson and Financial Analyst Lena participated in the CSBS Board Meeting and Supervisors Symposium held in Washington, D.C. from December 8 – 11, 2014.
 - Commissioner Cooper participated in a Multi-State MSB Examination Taskforce (MMET) meeting held in Tucson, Arizona from January 13 – 15, 2015. The MMET is the state representative body charged with coordinating and facilitating multi-state supervision of money service businesses.
 - Commissioner Cooper met with key members and/or staff of Congress, including Senate Majority Whip John Cornyn, House Financial Services Chairman Jeb Hensarling, Representative Randy Neugebauer, and Representative Lamar Smith in Washington, D.C. on January 20 – 22, 2015. These meetings covered a variety of topics but primarily focused on regulatory relief for community banks.
 - Commissioner Cooper and various other staff members attended IBAT Regional Meetings held in Wichita Falls, Fort Worth, Amarillo, Lubbock, El Paso, San Angelo, Waco, San Antonio and Austin from January 26 – 30, 2015.

- Commissioner Cooper participated in an Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) outreach meeting held in Dallas on February 4, 2015. EGRPRA requires that regulations prescribed by the federal banking regulatory agencies be reviewed by the agencies at least every 10 years. The purpose of the reviews is to identify outdated, unnecessary, or burdensome regulations and consider how to reduce regulatory burden while maintaining the safety and soundness of the financial system. The outreach meeting is intended to solicit feedback from stakeholders about burdensome regulations.
- Deputy Commissioner Newberg, Director Purdom and Regional Directors Kuntschik and Walker participated in intern interviews and advisory board meeting for the Texas A&M Banking Program from February 5 – 6, 2015.
- Federal Capital Programs

Federal Programs	Troubled Asset Relief Program (TARP) as of 01/07/2015	Small Business Lending Fund (SBLF) as of 12/31/2014
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed <i>(\$ in millions)</i>	\$2,837.7	\$255.7
Number of Banks with Outstanding Funds	2	11
Total Amount Outstanding <i>(\$ in millions)</i>	\$17.5	\$253.8



To: Finance Commission Members
 From: Daniel Frasier, Director of Corporate Activities
 Date: February 3, 2015
 Subject: Summary of the Corporate Division Activities

Corporate Activities		Applications and Notices Processed						
Entities	FY2012	FY2013	FY2014	1Q14	2Q14	3Q14	4Q14	1Q15
*Banks and Bank-related (holding companies, etc.)	205	197	271	75	59	59	78	45
Foreign Banks	7	1	0	0	0	0	0	0
Trust Companies	7	11	13	1	2	8	2	3
MSBs	18	21	23	8	7	5	3	7
PCSEAs	7	3	11	2	5	1	3	0
CVEs	5	4	3	0	3	0	0	0
Cemetery Brokers	-	-	4	-	3	1	0	0
Other (Use of Name)	44	67	41	6	10	13	12	10
Totals	293	304	366	92	89	87	98	65
Background Checks Completed								
Entities	FY2012	FY2013	FY2014	1Q14	2Q14	3Q14	4Q14	1Q15
#Banks and Bank-related (holding companies, etc.)	76	71	111	40	51	17	6	4
Foreign Banks	0	0	0	0	0	0	0	0
Trust Companies	14	8	10	2	2	8	0	8
MSBs	199	130	108	33	27	22	14	43
PCSEAs	0	0	0	0	0	0	0	0
CVEs	0	0	0	0	0	0	0	0
Other	1	1	0	0	0	0	0	0
Totals	290	210	229	75	80	47	20	55

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

Entities/Activities	Application and Notices Under Review (as of February 3, 2015)
*Banks and bank-related (holding companies, etc.)	17
Foreign Banks	0
Trust Companies	2
MSBs	11
PCSEAs	0
CVEs	0
Cemetery Broker	1
Other (Use of Name)	2
Totals	33

Division Highlights

- The overall volume of filings processed for the 1st fiscal quarter of 2015 was lower than anticipated in part because a number of applications processed concurrently with our federal counterparts were delayed due to protests and other issues. These issues were mostly resolved in mid-December 2014. Application volumes received in the first two months of the 2nd fiscal quarter of 2015 are considered moderate after a slow start in January.
- Chartering, Conversion, and Merger Activity – The following transactions consummated in the 1st quarter of the 2015 fiscal year:
 - *Banks*
 - Independent Bank, McKinney, completed their merger acquisition of Houston Community Bank, N.A., Houston
 - Vantage Bank Texas, San Antonio, completed their merger acquisition of D’Hanis State Bank, Hondo
 - First Bank & Trust Company, Lubbock, completed their merger acquisition of Texas Savings Bank, SSB, Snyder
 - SharePlus Bank, Plano, merged with and into Green Bank, N.A., Houston
 - State Bank of Texas, Dallas, completed their FDIC assisted purchase and acquisition of home office and branch of The National Republic Bank of Chicago, Chicago, Illinois
 - First Bank & Trust, Seymour, completed their affiliate mergers with Citizens State Bank, Princeton, Memphis State Bank, Memphis, and First Bank, Whitney
 - Northstar Bank of Texas, Denton, completed their merger acquisition of Community Bank, Fort Worth
 - *Trust Companies*
 - Bankers Trust Company of Texas, Dallas, voluntarily closed
 - Invesco Trust Company, Houston, completed its conversion to a Texas state trust company



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

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

Date: February 2, 2015

Subject: Summary of the Special Audits Division Activities

Special Audits				FY 2015								
Entity	FY2013		FY2014		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))												
MSB	135	\$96.2	136	\$96.0	141	\$96.4						
PFC	389	\$3.3	381	\$3.4	386	\$3.4						
PCC	244	\$275.8	242	\$286.6	242	\$291.4						
CB	-	-	4	n/a	4	n/a						
PCSEA	11	n/a	11	n/a	11	n/a						
CVE	3	n/a	3	n/a	3	n/a						
Examinations Performed												
MSB	94		93		28							
MSB Limited Scope	1		0		0							
MSB Accepted other State	14		6		0							
PFC	254		295		59							
PFC Limited Scope	8		10		1							
PCC	177		179		44							
PCC Limited Scope	6		6		0							
Ratings (# / %) Assigned to All Regulated Entities												
1	278	37%	319	43%	316	43%						
2	362	48%	355	48%	367	50%						
3,4, & 5	114	15%	66	9%	54	7%						
Noncompliance with Examination Priorities (Past Due)												
MSB	9		15		9							
PFC	41		1		3							
PCC	31		4		5							
Enforcement Actions												
MSB	2		3		1							
PFC	7		1		2							
PCC	6		0		0							
PCSEA	0		0		0							

NOTES:

PCC \$ amounts reflected in the millions.
Limited scope examinations do not receive a rating.

Division Activities:

Below is a breakdown on all past due examinations:

- All 17 past due Special Audit examinations are on average approximately 30 days past due.
- Our current examination schedule reflects that seven of the past due MSB examinations were completed in December 2014. The remaining two examinations have been delayed until June 2015 due to coordination with other MTRA state agencies and participation with the CFPB.
- Our current examination schedule reflects that all past due PCC/PFC examinations were completed in January 2015, except for the two past due PCC examinations which are in legal proceedings prohibiting the completion of the examination.
- Special Audits met all performance measures for the first quarter of FY 15.

We continue to utilize staff resources to monitor for and investigate illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable rules and regulation to protect the rights and interests of Texas consumers. In the past two weeks, we notified four businesses that we believe are operating without a MSB license in Texas. The deadline for these companies to respond to the Department has not yet expired.

During the week of January 19th, Director Reese attended the CFPB/CSBS Coordinated Examination Planning Event in Washington, DC. Approximately 70 CFPB and state examiners who had either participated in a coordinated examination in 2014 or plan to participate in a coordinated examination in 2015 attended the event. The program was intended to give examiners a better understanding of their role in the coordinated examination process.

Actual Performance for Output/Efficiency Measures

Fiscal Year 2015

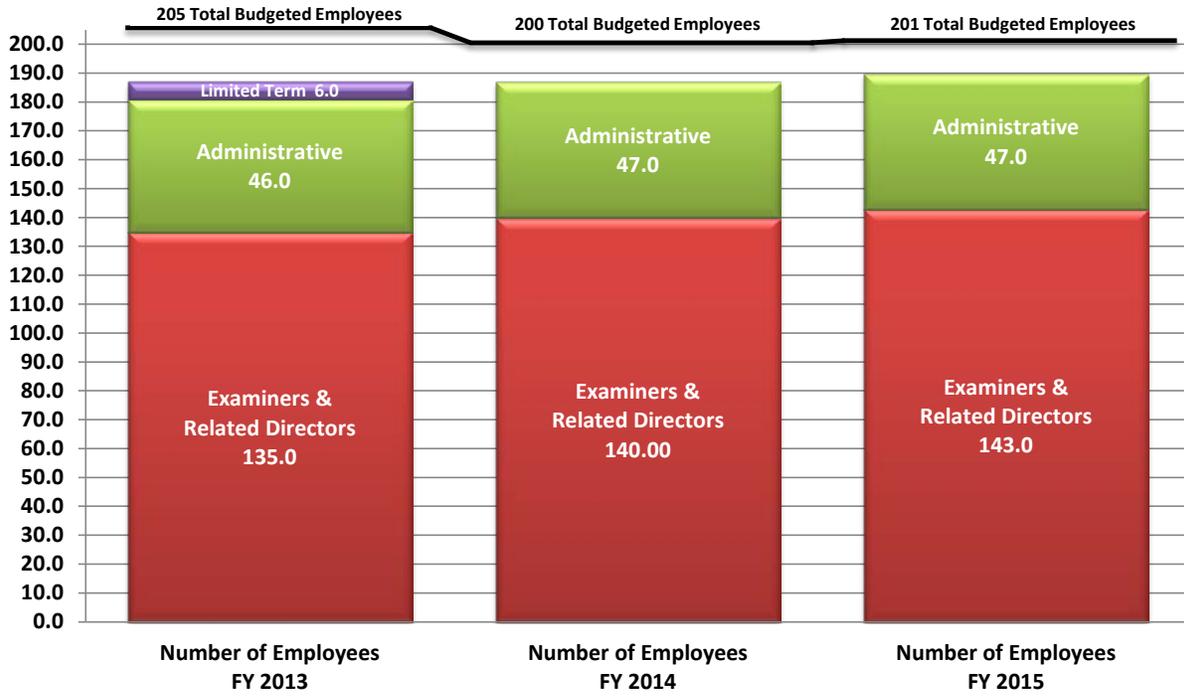
For Period Ending November 2014

Type/Strategy/Measure	2015 Target	2015 Quarter	2015 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1	BANK EXAMINATION			
	1. # BANK EXAMINATIONS PERFORMED			
Quarter 1	107	24	24	22.43%
	2. # TRUST/IT EXAMINATIONS PERFORMED			
Quarter 1	235	54	54	22.98%
1-2-1	NON-BANK EXAMINATION			
	1. # SPECIAL AUDIT LICENSEES EXAMINED			
Quarter 1	560	132	132	23.57%
1-3-1	APPLICATION PROCESSING			
	1. # LICENSE APPLICATIONS COMPLETED			
Quarter 1	322	64	64	19.88%
	* A number of applications processed concurrently with our federal counterparts were delayed due to protests or other issues. These issues were resolved in mid-December 2014.			

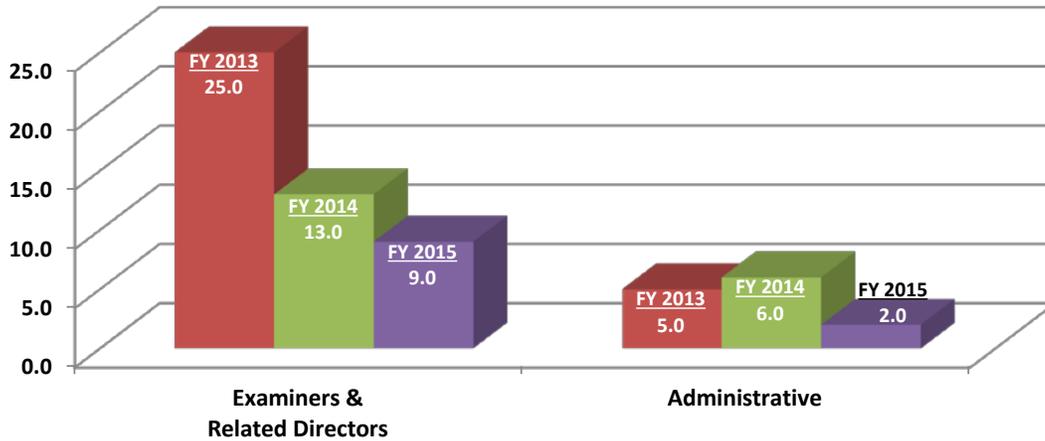
* Varies by 5% or more from target.

Texas Department of Banking

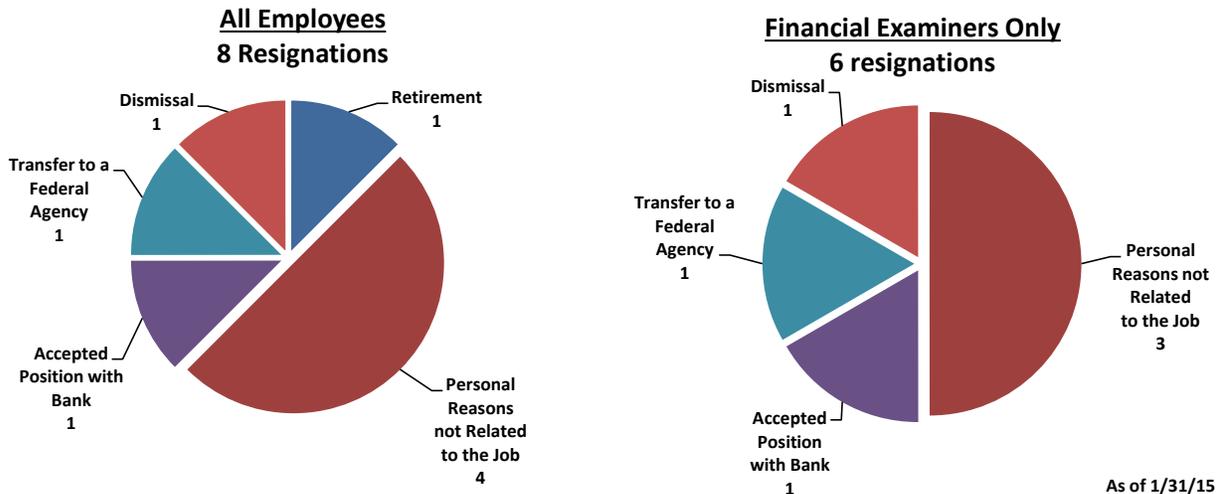
Employee Data for Fiscal Years 2013, 2014 and 2015



New Hire Data for Fiscal Years 2013, 2014 and 2015



FY 2015 Employee Turnover Reasons



As of 1/31/15



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

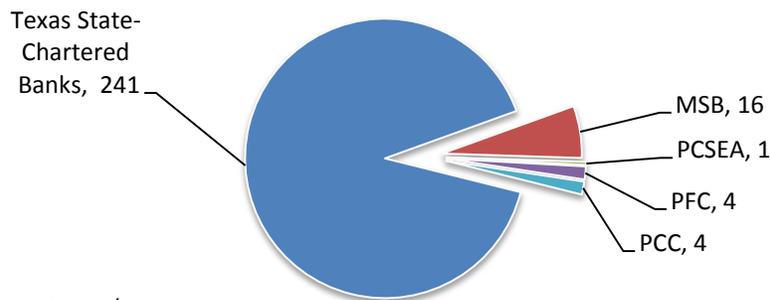
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To: Finance Commission Members
From: Wendy Rodriguez, Director of Strategic Support *WR*
Date: February 1, 2015
Subject: Summary of the Strategic Support Division Activities

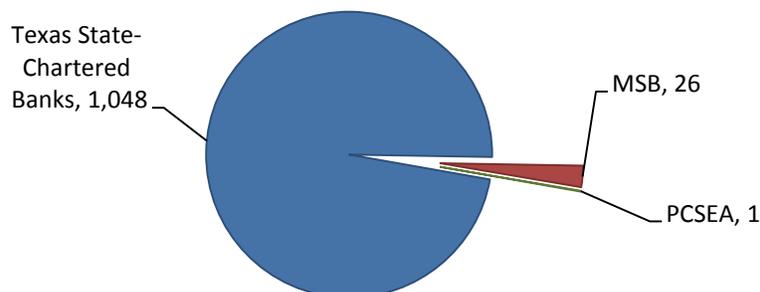
Complaints on Regulated Entities September 2014 - December 2014



Recoveries = \$2,850

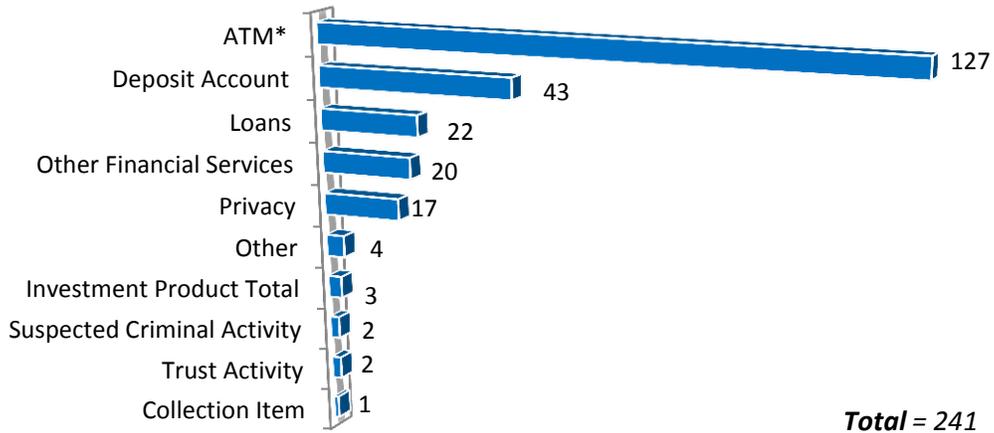
Total = 266

Inquiries on Regulated Entities September 2014 - December 2014



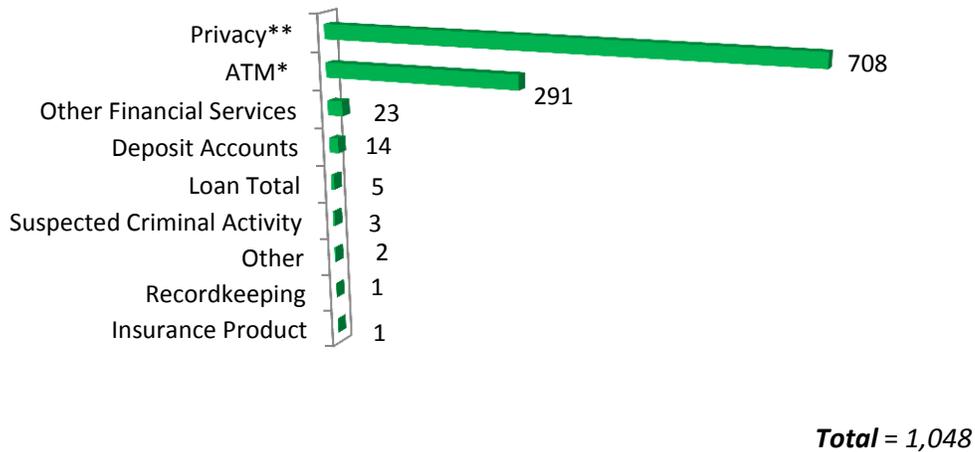
Total = 1,075

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



* Activity related 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 a representative.

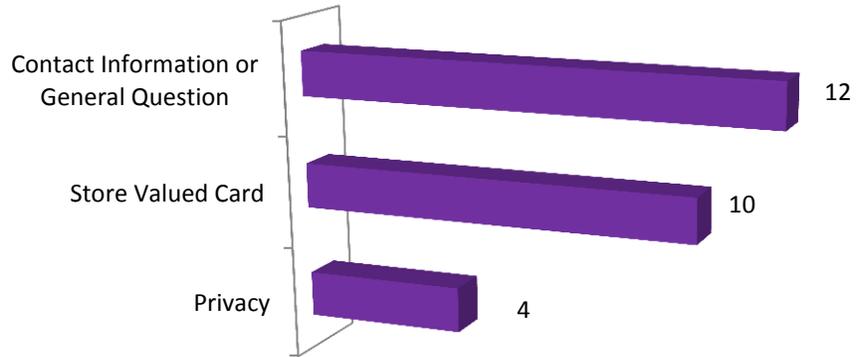
**State-Chartered Banks and Trust Companies
 Inquiries by Type
 September 2014 - December 2014**



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

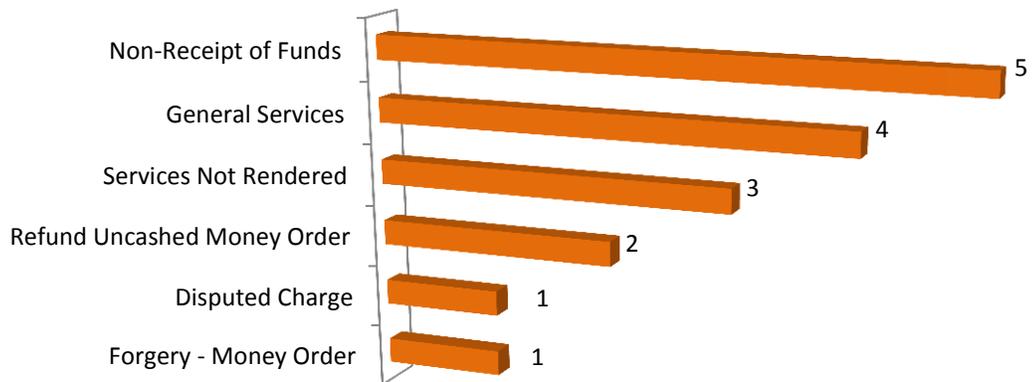
* Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.

**Money Services Businesses
Inquiries by Type
September 2014 - December 2014**



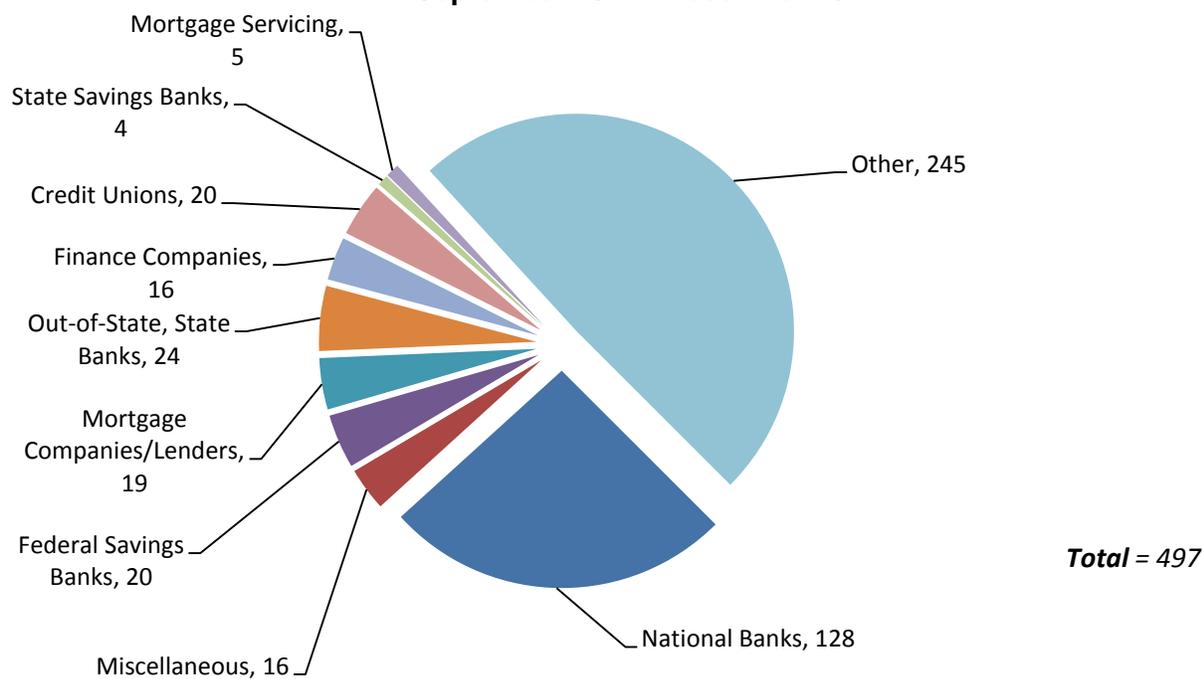
Total: 26

**Money Services Businesses
Complaints by Type
September 2014 - December 2014**



Total: 16

Complaints and Inquiries Against Nonregulated Entities September 2014 - December 2014



Average Number of Days to Close a Complaint

Type	Sept. 2014	Dec. 2014
State-Chartered Banks		16
Trust		n/a
PCSEA		n/a
PFC/PCC		36
MSB		45

CANS Activity

January 1, 2011 – January 30, 2015

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	243	1,586
Texas State-Chartered Savings Banks	30	48
Federal Savings Banks	10	278
State Credit Unions	161	1,100
Federal Credit Unions	229	1,180
National Banks	165	602
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	64
Total	853	4,858

Bank Examination Testing System (BETS) Activity

	FY 2012	FY 2013	FY 2014	FY 2015 Sept Jan.
Beginning Balance of FE3's	27	20	16	14
Number of Candidates Passing Each Phase				
I. General Knowledge	6	3	5	2
II. Loan Analysis	5	8	1	2
III. Panel	4	10	2	2
IV. Test Bank	3	11	1	2
Ending Balance of FE 3's	20	16	14	18

Promotions				
From FE3A to FE3B	6	3	5	9
From FE3B to FE4 (Commissioned Examiner)	3	9	2	2

Other Divisional Items:

- The 84th leg session convened on Tuesday, January 13, 2015 at noon. Weekly reports of tracked bills and scheduled committee meetings will be provided each Monday during the session.
- The Department is hosting a free financial education webinar on February 19, 2015, relating to the Texas Financial Education Endowment (TFEE). The goal of the webinar is to educate participants about the TFEE grant program and will feature two organizations that were recipient of these funds.



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, 2015
RE: Legal Division Update

Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case will be heard by Judge Scott Jenkins. Plaintiffs filed their brief in support of their amended petition for judicial review of the order on February 2. Briefing will continue into March, and a bench hearing will follow.

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 is a case initially filed to seek the appointment of a receiver. A suitable buyer for the cemetery has not been located. We have drafted a potential legislative change that would assist the Department in resolving this situation and others similar.

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.

Contested Case Hearings

In re EscrowHill Limited, et al., Docket No. BM-1503-14-277(HN). EscrowHill allegedly violated Texas Finance Code, Chapter 151, by conducting money transmission without a license. The Commissioner issued an Order to Cease and Desist Activity against EscrowHill on November 26, 2014. The order required EscrowHill to immediately cease offering money transmission services to Texas residents and to reconfigure their website to prevent Texas residents from using their services. EscrowHill did not request a hearing and the order became effective on December 22, 2014. Within a few days of the order becoming effective, Department staff reviewed EscrowHill's website and verified that it included statements indicating that money transmission services were not available to Texas

residents. However, in early January 2015, Department staff became aware that the company's website had been modified again. The current version of EscrowHill's website allows Texas residents to register for their services, and contains no statements that the services are not available to Texas residents. A hearing to assess penalties is set for March 3, 2015.

In re Juba Express Group, LLC, Docket No. BM-1501-14-267(HN). Juba holds a license issued by DOB to operate a money transmission business. In May 2014, the Department issued a report of examination citing numerous violations and deficiencies. Juba allegedly provided an insufficient response to the report in September 2014. On October 3, 2014, the Department issued an Order to Cease and Desist Activity and to Revoke License. Juba timely requested a hearing to contest the order. Juba has since submitted documentation to the Department allegedly curing the deficiencies noted in the ROE. The hearing, initially set for January 29, 2015, has been continued until June 15, 2015 to allow the Department to conduct an onsite examination to determine whether violations have been corrected.

Orders

Since the last Legal Division memo was prepared, the Commissioner issued two orders, including the following final public orders:

Order No. 2015-001, dated 1/21/2015; Order to Cease and Desist and to Revoke License, Otti Money Exchange, Inc., Brownsville, TX

Order No. 2015-002, dated 2/2/2015; Order approving conversion from trust-funded prepaid funeral benefits, Funeral Caring USA, Inc., San Antonio, TX

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2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §3.92, Concerning User Safety at Unmanned Teller Machines.

PURPOSE: Amendments to §3.92 are proposed for adoption to reduce regulatory burden by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) are proposed to be updated to mention online fraud and other relatively new cyber threats and other ATM risks.

RECOMMENDED ACTION: One comment was received on 7 TAC §3.92, from the Independent Bankers Association of Texas (IBAT). IBAT in general supports adoption of the amendments but recommended two modifications that the Department agrees with and has incorporated into the proposed adoption. The Department recommends that the Commission approve adoption of the amended rule in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt amendments to 7 TAC §3.92 with changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
Subchapter E. Banking House and Other Facilities
7 TAC §3.92

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §3.92, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs, with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10117).

The amended rule will reduce regulatory burden while still providing important protections to consumers, by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) have been updated to address security issues that have emerged in recent years.

Subsection (e) formerly required a bank, at the time the initial disclosure of terms and conditions is provided to the customer, to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM, and subsequently furnish the same notice at least annually. This requirement has remained in place since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As amended, §3.92(e) requires a bank to provide notice of basic ATM safety precautions to its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued or renewed, and an annual notice is no longer required. Further, the notice can be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and only one notice is required in the event the bank furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in §3.92(e)(2) has been updated to mention online fraud and other relatively new cyber threats, and other ATM risks, important information for bank customers.

The Department received one comment supporting the proposed amendments from the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. IBAT also offered two suggestions for improving the proposal.

IBAT noted that the requirement to re-send the notice every time an access device is replaced is not necessary or required by statute. Finance Code 59.309 does not actually require the notice of safety precautions to be sent more than once. IBAT recommended that the notice should only be required when the access device is issued or

renewed, and not when the access device is replaced. In support, IBAT observed that significant security breaches at major retailers have recently caused banks to replace debit cards multiple times in the same year, and providing the notice of user safety each time is both burdensome and duplicative. In addition, IBAT requested additional clarification that the notice may be included in an initial or periodic disclosure statement and need not be in a stand-alone mailing, citing Finance Code §59.309(c) in support. The commission concurs with and accepts both suggestions, and has modified the amendments to §3.92(e) accordingly.

The amendments are adopted pursuant to Finance Code, §59.310, which provides the commission with authority to adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

§3.92. User Safety at Unmanned Teller Machines.

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

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under

Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued or [] renewed [~~or replaced~~]. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer

ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a

recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) - (h) (No change.)

Certification

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

From: Neeley, Karen [mailto:kneeley@coxsmith.com]
Sent: Friday, January 16, 2015 8:57 AM
To: Legal
Cc: Shannon Phillips
Subject: Comments on Proposed Amendments to 7 TAC §3.92

The following comments are provided on behalf of the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. All of them have unmanned teller machines and are affected by this rule change.

First, thank you for updating this rule relating to user safety notices for unmanned teller machines. The proposal to change the frequency of notices should reduce regulatory burden while still providing important protections to consumers. In addition, the updated text addresses security issues that have emerged in recent years and includes important information for bank customers.

However, IBAT would suggest that the requirement to re-send the notice every time an access device is replaced is not necessary. First, the statute at 59.309 Tex. Fin. Code does not actually require the notice of safety precautions to be sent more than once. In fact, they may be included with other disclosures related to the access device including an initial disclosure statement. In the absence of a statutory requirement to send when cards are replaced, we would suggest that the notice should only be provided when the access device is issued or renewed. Lately, due to significant security breaches at Target, Home Depot and others, debit cards have been replaced multiple times in the same year. Providing the notice of user safety each time is burdensome and duplicative.

Further, thank you for clearly acknowledging that electronic delivery of the notice when an account is opened online is permitted. IBAT suggests as a “best practice”—but not as a requirement—that institutions publish their User Safety Notice on their web sites in an area accessible by the public (without logging on). This best practice would provide all consumers with readily accessible ongoing, useful information to protect their personal and information security.

Finally, it would be helpful if the first paragraph included the statutory language reflecting the fact that the notice may be included in an initial or periodic disclosure statement. It need not be in a stand-alone mailing.

Thank you for this opportunity to comment.

Karen M. Neeley

kneeley@coxsmith.com
512 703 6315 direct

COX SMITH

111 Congress Avenue | Suite 1800
Austin, Texas 78701
512 703 6300 tel
512 703 6399 fax
512 289 0594 mobile



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3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.91, Concerning Loan Production Offices.

PURPOSE: Amendments to §3.91 are proposed to clarify the requirements necessary for a foreign bank to establish a loan production office in this state.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC §3.91 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
Subchapter E. Banking House and Other
Facilities
7 TAC §3.91

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §3.91, concerning Loan Production Offices. The amended rule is proposed to clarify the requirements necessary for a foreign bank to establish a loan production office in this state.

The proposed amendments to §3.91 clarify and provide the requirements foreign banks must fulfill to establish and maintain loan production offices in Texas. Under proposed revised §3.91(g), a foreign bank must comply with Finance Code Chapters 201 and 204 in order to establish a loan production office (LPO) in this state, unless the LPO is being established as an office of a Federal branch regulated by the Office of the Comptroller of the Currency. In that case, then under proposed §3.91(h), the Federal branch must instead comply with the provisions of the Finance Code, Chapter 201, Subchapter B and notify the Banking Commissioner (the commissioner) of the proposed establishment of the office and provide the information as required by proposed §3.91(h)(1).

An LPO of a Federal branch that seeks to relocate or close an established LPO in this state, must notify the commissioner in writing of the planned relocation or closure of the LPO per proposed §3.91(h)(2). Under proposed §3.91(h)(3), no examinations or fees will be required under Finance Code,

Chapter 204, for an LPO of a Federal branch.

Dan Frasier, Director, Corporate Activities Division, 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. Frasier 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 more clarity regarding how to establish an LPO in this state. The simplified and clarified requirements may lead to the establishment of additional LPOs in Texas, which will create additional competition to meet the loan needs of Texas citizens.

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 amended rule must be submitted no later than 5:00 p.m. on April 6, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended rule is proposed under Finance Code, §201.003, which provides that the commission may adopt rules to accomplish the purposes of Title 3, Subtitle G, of the Texas Finance Code, including rules to implement and clarify this subtitle, which includes Chapter 204 governing Foreign Banks.

Finance Code, §§204.003 and 204.201 are affected by the proposed amended section.

§3.91. Loan Production Offices.

(a) - (f) (No change.)

(g) Foreign bank LPOs [~~corporations~~]. A banking corporation or association incorporated or organized under the laws of a jurisdiction other than the United States or a state, territory, commonwealth, or other political subdivision of the United States, must comply with the provisions of the Finance Code, Chapter 201, Subchapter B (§§201.101 *et seq.*), and Finance Code, Chapter 204, to establish an LPO, unless the LPO will be an office of a Federal branch regulated by the Office of the Comptroller of the Currency (OCC). In the latter case, the Federal branch must comply with subsection (h) of this section [~~to establish a representative office in this state~~].

(h) Federal branch LPO. A Federal branch may establish an LPO in this state by complying with the provisions of Finance Code, Chapter 201, Subchapter B (§§201.101 *et seq.*), and by notifying the banking commissioner of its intent to establish the LPO.

(1) The Federal branch shall notify the banking commissioner in writing on or before the 31st day preceding the date of establishment of the LPO, except that the banking commissioner may waive or shorten the period if the banking commissioner does not have a significant supervisory or regulatory concern regarding the Federal branch or its planned LPO. The written notification must include the physical address of the planned LPO, a list of the specific activities to be performed at the planned LPO, the anticipated date for the establishment of the LPO, documentation evidencing the approval of the OCC, and such other information as the banking commissioner may reasonably request.

(2) To relocate or close an existing LPO in this state, a Federal branch shall notify the banking commissioner in writing on or before the tenth day following the date of the relocation or closure of the LPO. The written notification must include the physical address of the LPO, the date for its closure or relocation, documentation evidencing the approval or acquiescence of the OCC, and such other information as the banking commissioner may reasonably request.

(3) An LPO of a Federal branch established in compliance with this section is not subject to examination by the banking commissioner under, or subject to any fee imposed by, Finance Code, Chapter 204.

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4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §3.23, Concerning Exercise of Trust Powers.

PURPOSE: New §3.23 is proposed to ensure that a state bank seeking to offer trust services can provide those services reliably and consistently without undue risk to its customers or to the safety and soundness of the institution. Only a bank that does not currently provide trust services and has not provided trust services over a year would be required to file a notice with the commissioner. In general, a bank filing notice could begin providing trust services on the 31st day after the notice is received by the banking commissioner unless the commissioner specifies an earlier or later date, subject to any conditions imposed by the banking commissioner and any required approval of the bank's primary federal regulator. The banking commissioner would have authority to extend the decision period if the bank's notice raises issues that require additional information or additional time for analysis but, if the period is extended, the bank would be required to wait for the commissioner's written approval to begin providing trust services.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed new 7 TAC §3.23 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
Subchapter B. General
7 TAC §3.23

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §3.23, concerning exercise of trust powers. The new rule is proposed to ensure that a state bank seeking to offer trust services can provide those services reliably and consistently without undue risk to its customers or to the safety and soundness of the institution.

Proposed §3.23(a) would define "trust services" to mean service as a fiduciary to hold or administer accounts established through a customer relationship involving the transfer of title to funds or property to the bank, including a relationship in which the bank acts as a trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar of stocks and bonds, mortgage or indenture trustee, escrow agent, transfer agent, or investment advisor.

However, proposed to be excluded from the term are relationships in which the bank as trustee or custodian acts in an essentially custodial or ministerial capacity, and can only invest the funds in its own time or savings deposits or in other assets at the explicit direction of the customer, provided the bank does not exercise any investment discretion or provide any investment advice with respect to such other assets. This exception would permit serving as the fiduciary under accounts like Individual

Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without having to obtain prior approval to provide trust services. The commission specifically requests comment regarding whether this specific exception is appropriate in light of the accompanying fiduciary risk, and whether other exemptions should be considered.

Only a bank that does not currently provide trust services and has not provided trust services over a year would be required to file a notice with the commissioner, as specified by proposed §3.23(b). Proposed §3.23(c) itemizes the information to be required in a notice submission for approval to provide trust services.

Finally, proposed §3.23(d) would permit a bank that already has trust powers specified in its certificate of formation to begin providing trust services on the 31st day after the notice is received by the

banking commissioner unless the commissioner specifies an earlier or later date, subject to any conditions imposed by the banking commissioner and any required approval of the bank's primary federal regulator. The banking commissioner would have authority to extend the decision period if the bank's notice raises issues that require additional information or additional time for analysis but, if the period is extended, the bank would be required to wait for the commissioner's written approval to begin providing trust services. A bank that is amending its certificate of formation to authorize trust powers would also be required to wait for the commissioner's written approval.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced consistency and quality of trust services offered by state banks that previously have not provided such services. In addition, the rule will support the safety and soundness of state bank operations by ensuring that fiduciary risk is appropriately managed and controlled.

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. Any additional costs incurred by a state bank seeking to provide trust services are required

to ensure the safety and soundness of bank operations, regardless of whether or not the rule as proposed is adopted.

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

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on April 6, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code §31.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state banks. As required by Finance Code §31.003(b), the commission has considered the need to (1) promote a stable banking environment; (2) provide the public with convenient, safe, and competitive banking services; (3) preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system; and (4) allow for economic development in this state.

Finance Code §32.001 and §32.101 are affected by the proposed new section.

§3.23. Exercise of Trust Powers.

(a) As used in this section, "trust services" mean services provided to the public as a fiduciary for hire or compensation, to hold or administer accounts established through a customer relationship involving the transfer of title to funds or property to the bank, including a fiduciary relationship in which the bank acts as trustee, executor, administrator, guardian, custodian, conservator, receiver, registrar of stocks and bonds, mortgage or indenture trustee, escrow agent, transfer agent, or investment advisor, except that "trust services" do not include customer services in which:

(1) the bank's duties as trustee or custodian are essentially custodial or ministerial in nature; and

(2) the bank may only invest customer funds:

(A) in its own time or savings deposits; or

(B) in other assets at the explicit direction of the customer, provided the bank does not exercise any investment discretion or provide any investment advice with respect to such other assets.

(b) A state bank that does not currently provide trust services and has not provided trust services for a period in excess of one year may not begin offering or providing trust services except upon compliance with this section and with any requirements imposed by the bank's primary federal regulator.

(c) A state bank described in subsection (b) of this section that intends to offer and provide trust services shall submit a notice to the banking commissioner describing the proposed trust services and the anticipated date for initiation of such services. In addition, the bank must submit:

(1) the bank's proposed business plan for providing trust services, including the policies and procedures the bank will employ to manage its fiduciary risk;

(2) sufficient biographical information on proposed trust management personnel to enable the banking commissioner to assess their qualifications;

(3) a description of the locations where the bank proposes to offer trust services and the manner in which such services will be provided at each location, including the extent to which fiduciary authority is proposed to be delegated to personnel at such location;

(4) if the bank's certificate of formation does not authorize the bank to exercise the trust powers necessary to provide the proposed trust services, an application for amendment of its certificate of formation pursuant to Finance Code, §32.101, accompanied by the filing fee required by §15.2 of this title (relating to Filing Fees and Cost Deposits); and

(5) a copy of any filings made with the bank's primary federal regulator providing notice or seeking approval to offer trust services.

(d) Provided the bank's certificate of formation authorizes the bank to exercise trust powers sufficient to provide the

proposed trust services, and subject to any conditions imposed by the banking commissioner and any required approval of the bank's primary federal regulator, the bank may begin offering and providing trust services on the 31st day after the date the banking commissioner receives the bank's notice under subsection (c) of this section unless the banking commissioner specifies an earlier or later date. The banking commissioner may extend the 30-day period on a determination that the bank's notice raises issues that require additional information or additional time for analysis. If the period is extended, or if the bank is amending its certificate of formation to authorize trust powers, the bank may not offer or provide trust services until it has received written approval of the banking commissioner.

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5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §33.52, Concerning How to Provide Information to Customers about Filing a Complaint.

PURPOSE: New §33.52 is proposed to implement Texas Finance Code §151.403(a)(6), which requires the authorized delegate of a money transmission license holder to display a notice indicating that the person is an authorized delegate.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed new 7 TAC §33.52 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.52

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.52, concerning how to provide information to customers about authorized delegates. The new rule is proposed to implement Texas Finance Code §151.403(a)(6), which requires the authorized delegate of a money transmission license holder to display a notice indicating that the person is an authorized delegate.

Texas Finance Code §151.403 circumscribes the conduct to which an authorized delegate of a money transmission license holder must conform. Under §151.403(a)(6), an authorized delegate "must prominently display on the form prescribed by the commissioner a notice that indicates that the person is an authorized delegate of the license holder." The department has generally allowed authorized delegates to include this notice as part of the consumer complaint notice required by 7 TAC §33.51, without mandating a specific form. This approach has proved successful. In order to satisfy the requirement of Finance Code §151.403(a)(6) that the commissioner prescribe a form for this notice, and to clarify for regulated entities that the delegate notice may be provided with the complaint notice, new §33.52 is proposed.

Stephanie Newberg, 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.

Ms. Newberg 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 greater clarity for how regulated entities can comply with the requirements of Finance Code Chapter 151.

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. The authorized delegates subject to the rule are already required to provide the notice, and the rule adds no new requirements.

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

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on April 6, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.403(a)(6) which requires the

commissioner to specify the form of the required notice.

Finance Code, §151.403 is affected by the proposed new section.

§33.52. Authorized Delegate Notice.

(a) In addition to the complaint notice required by §33.51(f) of this title, an authorized delegate of a money transmission license holder appointed in accordance with Texas Finance Code §151.402 must provide each of its Texas customers with notice that:

(1) is written in the language in which the transaction is conducted;

(2) states the name of the license holder; and

(3) indicates that the person is an authorized delegate conducting money transmission on behalf of the license holder.

(b) The notice must be provided by one or more of the methods described in §33.51(e)(3) of this title. If the authorized delegate maintains a website that advertises the money transmission services it provides on behalf of the license holder, the notice must also be prominently displayed on this website.

(c) The authorized delegate notice may be provided on a single form with the complaint notice required under §33.51 of this title.

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C.

**Texas Department of Savings
and
Mortgage Lending**

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C. Texas Department of Savings and Mortgage Lending

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

a. Industry Status

Composite ratings for state savings banks have not changed since the last meeting of the Finance Commission. However, due to the merger of three, similarly-rated, affiliated state savings banks, the total number of 1 or 2 rated state savings banks is now 26, or 96% of the industry.

The state savings banks quarterly financial data, as of December 31, 2014, has not been finalized by the FDIC. It will be provided at the next Finance Commission meeting.

b. Savings Bank Charter and Merger Activity

On October 16, 2014, an application was filed by Lone Star Bank, SSB, to acquire its sister banks, First Star Bank, SSB, Bremond, and Texas Star Bank, SSB, Lott. The application was approved and the transaction completed as of December 31, 2014. The resulting institution was renamed to SouthStar Bank, S.S.B.

c. Recap of Problem Institutions/Enforcement Issues

As of January 31, 2015, there are no troubled institutions.

d. Other Items

Commissioner Jones was elected Chair of the Board of the American Council of State Savings Supervisors (ACSSS). Additionally, Chief Supervisory Analyst, Jonathan Finley is serving on the CSBS Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) Comment Review Working Group.

ANNUAL FEE ASSESSMENT RATES - CURRENT

Assessment Schedule 1* - Effective March 1, 2014

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$5,997	0.000000000	\$0
2 million	20 million	5,997	0.000236725	\$2 million
20 million	100 million	10,258	0.000189379	20 million
100 million	200 million	25,408	0.000123092	100 million
200 million	1 billion	37,717	0.000104156	200 million
1 billion	2 billion	121,041	0.000085218	1 billion
2 billion	6 billion	206,259	0.000075749	2 billion
6 billion	20 billion	502,255	0.000064454	6 billion
20 billion	40 billion	1,411,611	0.000048553	20 billion
40 billion	250 billion	2,382,671	0.000033132	40 billion
250 billion		9,340,391	0.000032800	250 billion

* Maintains 50% of the Office of the Comptroller of the Currency's Annual Assessment, OCC 2013-37. Applicable to charters that have paid six quarterly assessments at the 75% rate.

Assessment Schedule 2* - Effective March 1, 2014

Assets Over	Not Over	Amount**	Plus	Over
\$0	\$2 million	\$8,996	0.000000000	\$0
2 million	20 million	8,996	0.000350186	\$2 million
20 million	100 million	15,387	0.000280148	20 million
100 million	200 million	38,112	0.000182090	100 million
200 million	1 billion	56,576	0.000154077	200 million
1 billion	2 billion	181,562	0.000126063	1 billion
2 billion	6 billion	309,389	0.000112056	2 billion
6 billion	20 billion	763,883	0.000095348	6 billion
20 billion	40 billion	2,117,417	0.000071825	20 billion
40 billion	250 billion	3,574,007	0.000049013	40 billion
250 billion		14,010,587	0.000048522	250 billion

*Maintains 75% of the Office of the Comptroller of the Currency's Annual Assessment, OCC 2013-37. 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

ANNUAL FEE ASSESSMENT RATES - NEW

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.

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

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

a. Residential Mortgage Loan Originators

The Department is currently in the “Reinstatement” period of renewals, which runs from January 1 through February 28, 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, 2015, the Department has received 394 reinstatement requests. Prior to the reinstatement period, the Department received renewal requests from 15,114 individuals and 3,411 companies and branches. Additionally, between November and December, the renewal period, the Department received 12,935 amendment filings and 1,130 new license requests.

Current Licensing Population:

License Type As of 01/31/2015	Approved		
	Company (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	5	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	65	n/a	
<i>Mortgage Company</i>	976	350	
<i>Mortgage Banker</i>	367	1,813	
<i>Mortgage Servicer</i>	140	n/a	
Totals	1,558	2,165	16,235

b. Mortgage Examinations

Through the end of the first quarter of fiscal year 2015, a total of 103 examinations were conducted covering 1,387 licensees. The examinations are continuing to identify various degrees of unlicensed/unauthorized activity and the issuance of incomplete conditional qualification/approval letters.

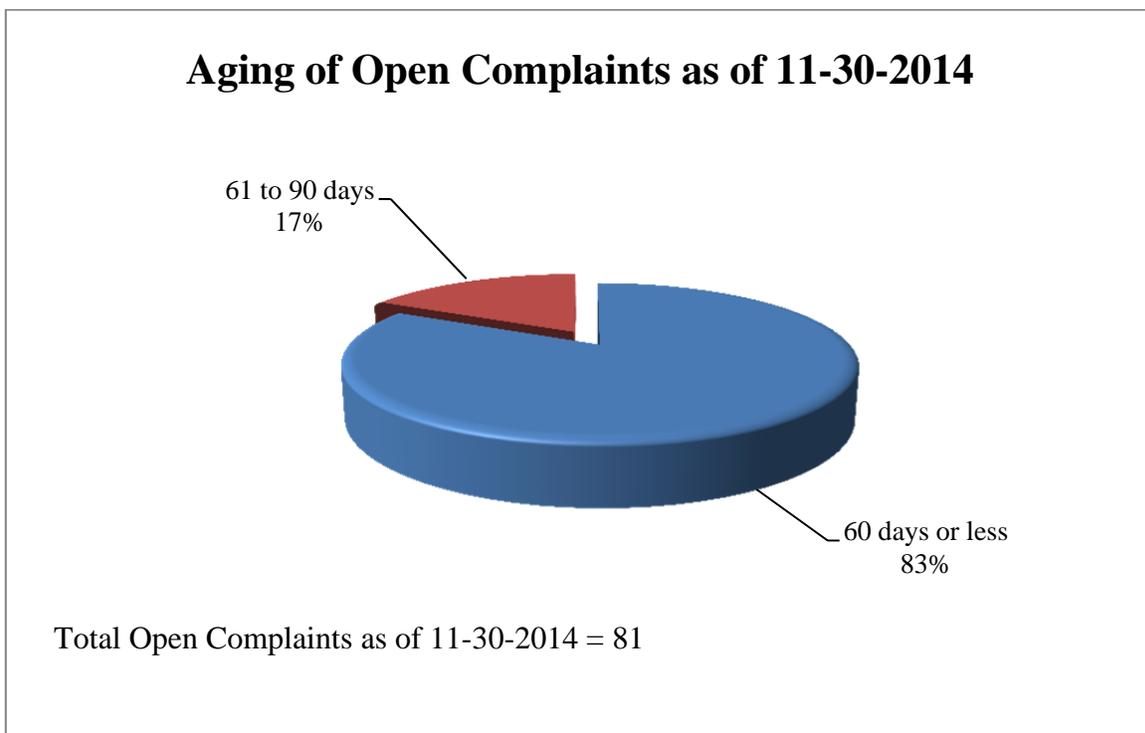
Three of the Department's mortgage examiners attended the NMLS annual conference the week of February 16, 2015. The remaining nine mortgage examiners will be attending a four and a half day training school, the week of April 27, 2015, provided by the American Association of Residential Mortgage Regulators, as part of the examiners regular training program.

The mortgage examination division is scheduled for an external audit by Garza Gonzales and Associates in 2015. The scheduled start date is to be determined.

c. Consumer Complaints/Legal Issues

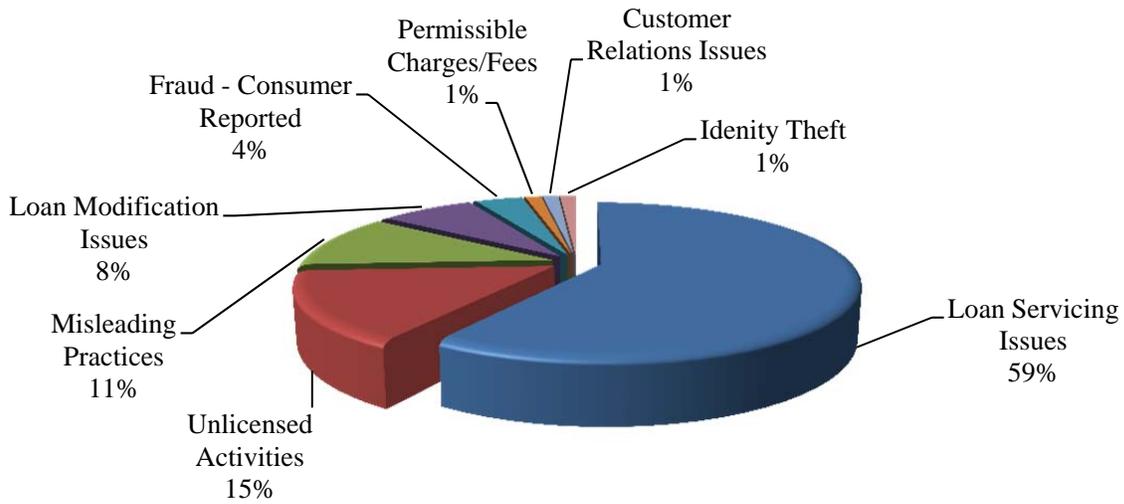
Consumer Complaints: The following charts reflect the consumer complaint information through the end of the first quarter of fiscal year 2015. Open complaint aging has remained within acceptable ranges with 100% being aged less than 90 days.

Loan servicing complaints continue to be the largest complaint category accounting for 61% of the total number of complaints received in the first quarter of fiscal year 2015. This represents a 3% decrease when compared to the same reporting period in fiscal year 2014. The total number of complaints received in the first quarter of fiscal year 2015 decreased 19% when compared to the same period in fiscal year 2014.



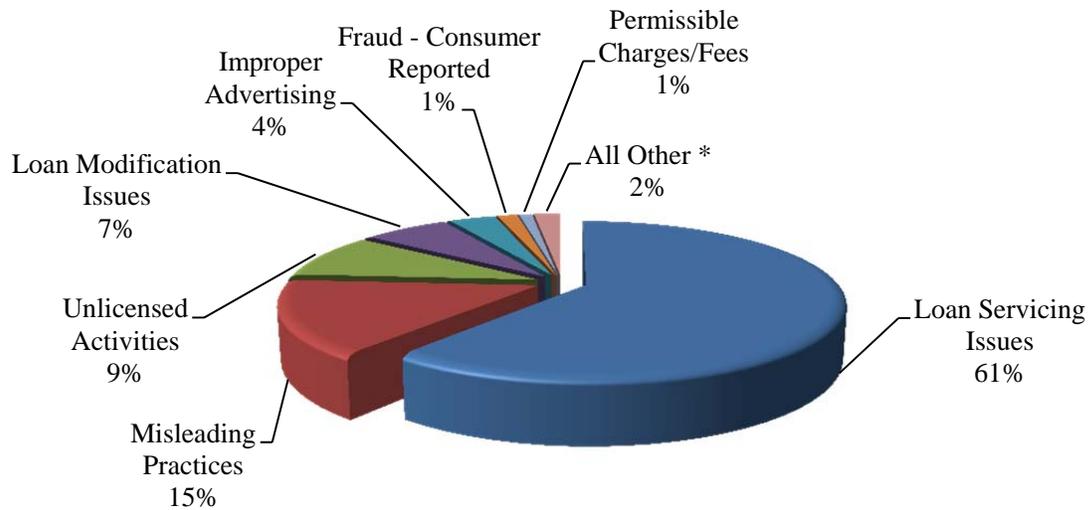
The next two charts show the nature of the complaints remaining open as of November 30, 2014, as well as the nature of all complaints received during the first quarter of fiscal year 2015.

Nature of Open Complaints as of 11-30-2014



Total Open Complaints as of 11-30-2014 = 81

Nature of Complaints Received - 1st Quarter Fiscal Year 2015

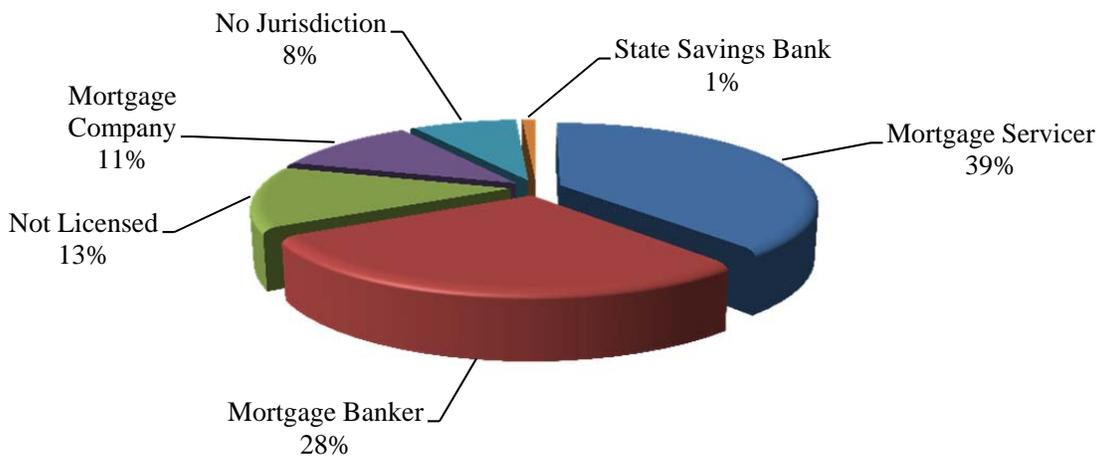


Total Complaints received in 1st Quarter of Fiscal Year 2015 = 197

* The "All Other" Category includes: Customer Relations Issues, Failure to Pay Appraisers/Vendors, Identity Theft, and Complaints Against State Savings Banks (1)

The next chart reflects complaints received, during the first quarter of fiscal year 2015, sorted by license type.

Respondent License Types - Complaints Received 1st Quarter Fiscal Year 2015



Total Complaints Received 1st Quarter Fiscal Year 2015 = 197

Enforcement Activity: During the period of December 01, 2014 through January 31, 2015, the Department reports the following Enforcement Activity:

Disciplinary Cases

Notices of Hearings Issued: 55
 Hearings Held: 5
 Final Orders as a Result of a Hearing: 0
 Orders to Cease and Desist: 1
 Orders to Take Affirmative Action: 8
 Agreed Orders to Cease and Desist: 0
 Agreed Orders to Take Affirmative Action: 2
 Orders of Suspension: 0
 Agreed Orders of Suspension: 0
 Orders Lifting Suspension: 0
 Final Orders Revoking License: 0
 Formal Advisory Letters: 10

Other Orders

Amended Orders to Cease and Desist: 0
 Amended Orders to Take Affirmative Action: 0
 Orders Rescinding Prior Order: 1
 Orders of Dismissal: 9

Appeals of License Denials

Notices of Hearings Issued: 0
 Appeals Received: 2
 Hearings Held: 2

Final Orders as a Result of a Hearing: 0
Dismissal Orders: 0
Agreed Orders: 0

Non-Sufficient Funds (NSF)

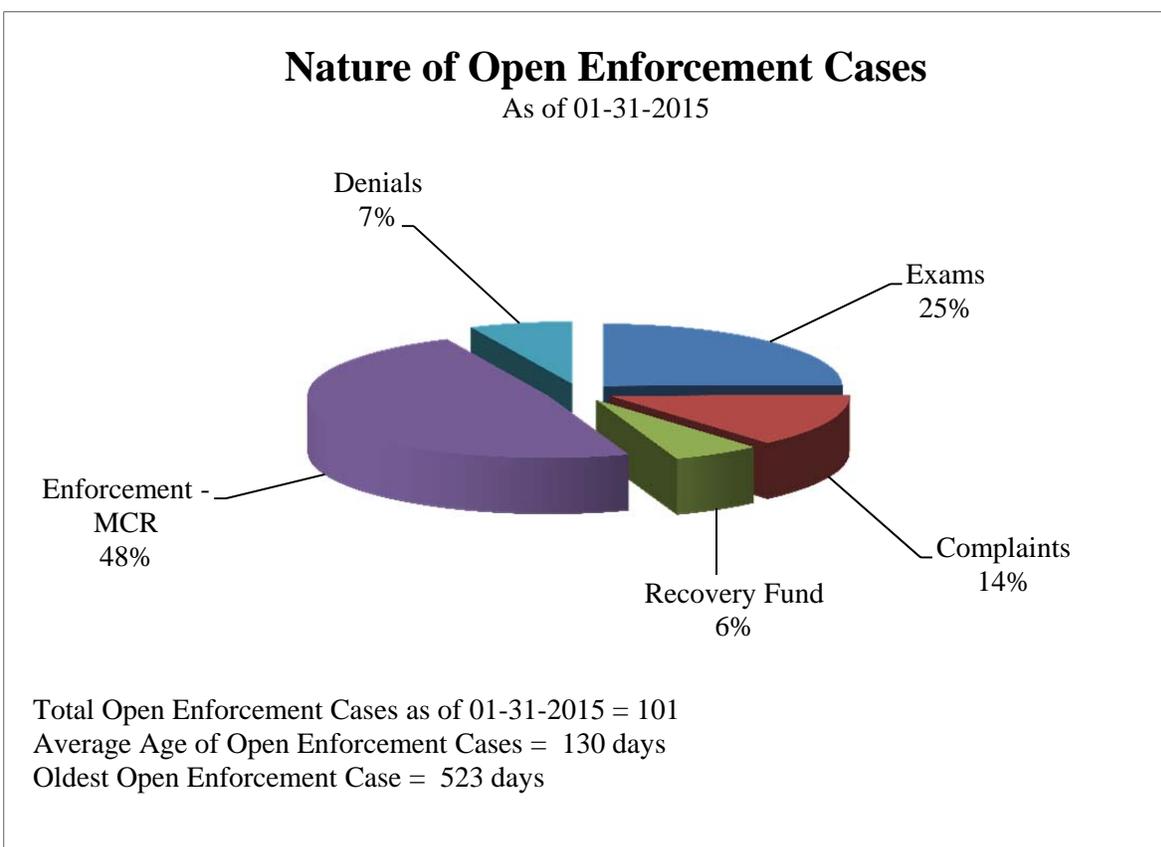
Letters Issued: 1

Recovery Fund

Notices of Hearings Issued: 0
Hearings Held: 0
Final Orders as a Result of a Hearing: 0

Collection Cases Referred to the Attorney General

Collection Cases Referred to the Attorney General: 0



Legal Issues: There were no Recovery Fund claims paid during the period December 1, 2014 through January 31, 2015.

d. Other Items

Mortgage Industry Advisory Committee – November 12, 2014 Meeting Minutes

10:02 a.m., Wednesday, November 12, 2014 – The Mortgage Industry Advisory Committee (MIAC) conducted its regularly scheduled meeting in the William F. Aldridge Hearing Room of the Finance Commission Building located at 2601 North Lamar Boulevard, Austin, Texas.

Committee members present were Armando Barbosa, Alvin Collins, Lance Ludman, Michael Morrow and Susan Stewart. Committee members absent were Judy Belanger. Savings and Mortgage Lending (SML) representatives present were Director of Mortgage Examination Tony Florence, Director of Licensing and Information Resources Steven O'Shields, and Executive Assistant Ruth Wright. SML Commissioner Caroline Jones was absent.

Director O'Shields introduced newly hired Executive Assistant Ruth Wright.

Director O'Shields provided Department activity updates as follows:

- As of October 31, 2014, there were 1,637 entities that were licensed, 144 were servicer companies, 369 were bankers, and 1,124 companies. There were also 2,179 branches, majority of which were bankers – 1,813, and 18,446 individual licenses.
- As of the end of the fiscal year, August 31, 2014, SML received 7,356 applications for licenses from individuals, branches and companies. There were 61,457 filings in the form of amendments, sponsorships, credit reports, etc., received and processed.
- As of November 8, 2014, 7,987 renewals were requested, of which 6,543 were individuals and 1,444 companies and branches. One third of individuals have not completed their required continuing education to date.
- In August 2014, Mortgage Call Reports Orders were sent to companies and approximately 60 entities responded with appeals. Many have paid, some have not paid and others requested payment plans. On October 31, 2014, letters were sent out to mortgage banker entities advising them of non-compliance. Entities that have outstanding deficiencies or penalties relating to mortgage call reports will not be able to request renewal until the items have been cleared.

Proposed changes to mortgage call reports were discussed. The proposed changes are:

1. Clarification of the definition of application.
2. Add reporting amounts and amounts closed for qualified mortgages.
3. Add servicing reporting for state specific servicing requirements.
4. Add additional fields to capture changes in the application when the amounts change from quarter to quarter so there will be accounting for any differences when amounts change on the loan.

Director O'Shields reported that the comment period ended on October 31, 2014. If the changes are adopted, they will go into effect in January 2015, with the first reporting being the first quarter of 2015.

Member Ludman requested clarification on the changes for the definition of application. Director O'Shields reported that there will not be a significant change or departure from what is currently used in MCRs and the changes are simply a guidance to eliminate confusion and provide real world examples. Director O'Shields reported that the proposed amendments and public comments may be found on the NMLS Resource Center website.

Director O'Shields reminded MIAC members that the Mortgage Industry Day Seminar will be held on November 19, 2014, from 2:00-5:00 p.m., at the Westin Memorial City in Houston, Texas, and distributed copies of the agenda to MIAC members.

Director O'Shields further reported that the 84th Legislature begins on January 13, 2015, and pre-filing began November 10, 2014.

There was an open discussion and comments on the upcoming changes on the requirements for TILA/RESPA and Member Stewart reported there were concerns within the industry to these changes.

Director Tony Florence provided an update for the mortgage examination area. During fiscal year 2014, 366 examinations were completed that covered 3,240 mortgage loan originators. In fiscal year 2014, SML examinations covered larger companies which sponsored more originators. Director Florence reported that the targeted goal for examinations was 3,600.

The examination cycle is currently running on a 30 month cycle which is better than the target of 36 months. Examination ratings, for fiscal year 2014, were discussed – 1 and 2 rated examinations represented 64%, 3 rated examinations represented 31%, and 4 and 5 rated examinations represented 5%.

Director Florence reported that there was still unlicensed and unauthorized activity. In-state and out-of-state companies and bankers were not conforming to the required language in Forms A and B in the conditional qualification and approval letters. Out-of-state companies and bankers had the most violations. Director Florence stated that as a result of upcoming renewals, a spike is expected in unlicensed activity.

In fiscal year 2014, the mortgage examination area had one retirement, one termination and one resignation. Three examiners were hired in July and August and training will be completed by January 2015.

Director Florence reported that the mortgage examiners based in Houston will be presenting at the Mortgage Industry Day and encouraged MIAC members to attend.

Director Florence provided handouts on the year-end numbers for complaints. He reported that the requirement for the registration of servicers went into effect September 1, 2011. In the first year there was a slight increase in complaints. Between fiscal years 2012 and 2013, there was an increase from 715 to 988 complaints. In fiscal year 2014, there was a 6% decrease in the total number of complaints received to 929. Since the servicer registration requirement went into effect, 35% of complaints were servicing related in fiscal year 2012, 49% in fiscal year 2013, and 61% in fiscal year 2014.

Director Florence reported that servicing complaints are complex. He also reported that normally during the first quarter there is an increase in escrow complaints because of the disbursement of taxes. One of the challenges faced by staff has been receiving timely responses from large servicers.

Director Florence stated that misleading practices, the next largest complaint are at 15%, consisted primarily of improper disclosures or improper conditional approval letters, and unlicensed activity to include complaints about third party modification groups. There were some small and medium sized third party servicers who were not aware that there is a registration requirement for servicers. Sponsorship issues also continue to persist.

In fiscal year 2014, 973 complaints were closed. The two largest categories of disposition were insufficient evidence and no jurisdiction. The no jurisdiction category contains complaints about national and state banks, appraisers, builders, title companies, and others. A large number of the complaints in this category were from out-of-state property owners with complaints against Texas based servicers. Director Florence stated that the agency had jurisdiction if the property is located in Texas but will assist out-of-state property owners by referring them to the appropriate state or federal regulator.

Director Florence stated that the party resolved issues category contained resolutions that the agency assisted with in order to avoid a formal enforcement action, e.g., assistance with a voluntary restitution or refund, if appropriate.

Further discussion of the upcoming changes to the requirements for TILA/RESPA was discussed between the MIAC members. The discussion was led by member Morrow.

Meeting adjourned at 11:15 a.m.

Actual Performance for Output/Efficiency Measures

Type/Strategy/Measure	2015 Target	2015 Actual	2015 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1 BANK EXAMINATION				
1. THRIFT EXAMINATION AND SUPERVISION				
Quarter 1	38	6	6	15.79% *
The Department examines state chartered savings banks jointly with the FDIC, based on a priority schedule. Examination cycles range from 12 to 18 months with frequency based on multiple factors, including institution size, CAMELS rating, and length of time in operation. The results for this measure may fluctuate between quarters due to the timing of individual examinations.				
2-1-1 MORTGAGE LICENSING				
1. # NEW LIC/ORIGINATORS APPROVED				
Quarter 1	6,500	1,452	1,452	22.34%
2-1-2 MORTGAGE EXAMINATION				
1. NUMBER OF LICENSEES INSPECTED				
Quarter 1	3,600	1,387	1387	38.53% *
Two large mortgage examinations were completed in the first quarter of FY 2015 which accounted for 49% of the total number of licensees examined for the period. This type of concentration should not continue over the remaining quarters of FY 2015.				
3-1-1 COMPLAINT AND INQUIRY PROCESS				
1. # COMPLAINTS PROCESSED				
Quarter 1	900	199	199	22.11%

*Varies by 5% or more from target.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – First quarter of fiscal year 2015 has been closed out. The financials are attached elsewhere in the package. As of the end of first quarter, the revenues are at 105% of budget, due to higher volume of license fees and administrative penalties, and the expenditures at 93% 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.

Fiscal Notes – Staff review filed bills for potential fiscal impact, and prepare fiscal notes and other reports as requested from the Legislative Budget Board and members of the Legislature.

b. Staffing

As of January 31, 2015, the agency was staffed at 54 regular full time employees and 1 regular part-time employee with 64 FTEs available.

An examiner retired in January. Several vacancies are in different stages of the hiring process. Staffing needs are being reviewed and addressed continuously.

c. Other Items

None

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4. Discussion and Possible Vote to Take Action on the Adoption of Proposed Amendments to 7 TAC §67.17, Concerning User Safety at Unmanned Teller Machines.

PURPOSE: The purpose of the amendments to §67.17 are to reduce regulatory burden by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) are updated to mention online fraud and other relatively new cyber threats and other ATM risks.

RECOMMENDED ACTION: The Department recommends the Finance Commission adopt the amended rule.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC §67.17.

*Title 7. Banking and Securities**Part 4. Texas Department of Savings and Mortgage Lending**Chapter 67. Savings and Deposit Accounts**§67.17 User Safety at Unmanned Teller Machines*

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Savings and Mortgage Lending (the department), adopts amendments to §67.17, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs, with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10118).

The amended rule will reduce regulatory burden while still providing important protections to consumers, by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) have been updated to address security issues that have emerged in recent years.

Subsection (e) formerly required a state savings and loan association, at the time the initial disclosure of terms and conditions is provided to the customer, to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM, and subsequently furnish the same notice at least annually. This requirement has remained in place since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As amended, §67.17(e) requires a state savings and loan association to provide notice of basic ATM safety precautions to

its customer whenever an access device (e.g., an ATM card or debit or credit card) is issued or renewed, and an annual notice is no longer required. Further, the notice can be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and only one notice is required in the event the state savings and loan association furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in §67.17(e)(2) has been updated to mention online fraud and other relatively new cyber threats, and other ATM risks, important information for state savings and loan association customers.

The Department received one comment supporting the proposed amendments by the Finance Commission of Texas to 7 TAC §3.92, from the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. IBAT offered two suggestions for improving such proposal and such suggestions apply equally to the proposed amendments to 7 TAC §67.17.

IBAT noted that the requirement to re-send the notice every time an access device is replaced is not necessary or required by statute. Finance Code 59.309 does not actually require the notice of safety precautions to be sent more than once. IBAT recommended that the notice should only be required when the access device is issued or renewed, and not when the access device is replaced. In support, IBAT observed that

significant security breaches at major retailers have recently caused banks to replace debit cards multiple times in the same year, and providing the notice of user safety each time is both burdensome and duplicative. In addition, IBAT requested additional clarification that the notice may be included in an initial or periodic disclosure statement and need not be in a stand-alone mailing, citing Finance Code §59.309(c) in support. The commission concurs with and accepts both suggestions, and has modified the amendments to §67.17(e) accordingly.

The amendments are adopted pursuant to Finance Code, §11.302, which provides that the Finance Commission of Texas may adopt rules applicable to state savings associations or to savings banks and under Finance Code, §59.310, which provides the commission with authority to adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

§67.17. User Safety at Unmanned Teller Machines.

(a) – (d) (No change.)

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

(1) When notice is required. The issuer must furnish the notice to its customer whenever an access device is issued or [-] renewed [~~or replaced~~]. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a

recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web

browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) - (h) (No change.)

Certification

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

Ernest C. Garcia
General Counsel
Texas Department of Savings and Mortgage Lending

5. Discussion and Possible Vote to Take Action on the Adoption of Proposed Amendments to 7 TAC §77.115, Concerning User Safety at Unmanned Teller Machines.

PURPOSE: The purpose of the amendments to §77.115 are to reduce regulatory burden by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) are updated to mention online fraud and other relatively new cyber threats and other ATM risks.

RECOMMENDED ACTION: The Department recommends the Finance Commission adopt the amended rule.

RECOMMENDED MOTION: I move we adopt the amendments to 7 TAC §77.115.

*Title 7. Banking and Securities**Part 4. Texas Department of Savings and Mortgage Lending**Chapter 77. Loans, Investments, Savings, and Deposits**§77.115 User Safety at Unmanned Teller Machines*

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Savings and Mortgage Lending (the department), adopts amendments to §77.115, concerning user safety at unmanned teller machines, typically referred to as automated teller machines or ATMs, with changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10119).

The amended rule will reduce regulatory burden while still providing important protections to consumers, by eliminating repetitive annual notice requirements and by authorizing delivery of notice by electronic means in certain circumstances. In addition, the recommended basic safety precautions in subsection (e) have been updated to address security issues that have emerged in recent years.

Subsection (e) formerly required a state savings bank, at the time the initial disclosure of terms and conditions is provided to the customer, to furnish its customers with a printed notice of basic safety precautions that a customer should employ while using an ATM, and subsequently furnish the same notice at least annually. This requirement has remained in place since 1996, despite significant public experience gained in almost 20 years of ATM usage and the proliferation of electronic communications between consenting parties.

As amended, §77.115(e) requires a state savings bank to provide notice of basic ATM safety precautions to its customer

whenever an access device (e.g., an ATM card or debit or credit card) is issued or renewed, and an annual notice is no longer required. Further, the notice can be delivered to a customer electronically if the customer has agreed to conduct transactions by electronic means, and only one notice is required in the event the state savings bank furnishes an access device to more than one customer on the same account.

In addition, the example list of possible safety precautions in §77.115(e)(2) has been updated to mention online fraud and other relatively new cyber threats, and other ATM risks, important information for state savings bank customers.

The Department received one comment supporting the proposed amendments by the Finance Commission to 7 TAC §3.92, from the Independent Bankers Association of Texas (IBAT), a trade association representing over 400 independent, community banks domiciled in Texas. IBAT offered two suggestions for improving such proposal and such suggestions apply equally to the proposed amendments to 7 TAC §77.115.

IBAT noted that the requirement to re-send the notice every time an access device is replaced is not necessary or required by statute. Finance Code 59.309 does not actually require the notice of safety precautions to be sent more than once. IBAT recommended that the notice should only be required when the access device is issued or renewed, and not when the access device is replaced. In support, IBAT observed that significant security breaches at major

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7 TAC §77.115

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retailers have recently caused banks to replace debit cards multiple times in the same year, and providing the notice of user safety each time is both burdensome and duplicative. In addition, IBAT requested additional clarification that the notice may be included in an initial or periodic disclosure statement and need not be in a stand-alone mailing, citing Finance Code §59.309(c) in support. The commission concurs with and accepts both suggestions, and has modified the amendments to §77.115(e) accordingly.

The amendments are adopted pursuant to Finance Code, §11.302, which provides that the Finance Commission of Texas may adopt rules applicable to state savings associations or to savings banks and §96.002, which provides that the commission may adopt rules necessary to protect public investment in savings banks and under Finance Code, §59.310, which provides the commission with authority to adopt rules to implement Subchapter D of Finance Code, Chapter 59 (§§59.301 - 59.310).

§77.115. User Safety at Unmanned Teller Machines.

(a) – (d) (No change.)

(e) Notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C.

§1693 et seq.). The notice may be delivered electronically if permissible under Business & Commerce Code, §322.008.

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(2) Content of notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

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(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

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(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

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if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) - (h) (No change.)

Certification

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

Ernest C. Garcia
General Counsel
Texas Department of Savings and Mortgage Lending

6. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Khosrow Khani v. Texas SML; Cause No. D-1-GN-13-000207, 200th Judicial District Court of Travis County, Texas

Update: Case closed; nonsuited January 5, 2015.

Sammy Trantham v. Texas Department of Savings and Mortgage Lending and Caroline C. Jones; Cause No. D-1-GN-14-004497, 419th Judicial District Court of Travis County, Texas

Update: Case closed; nonsuited January 5, 2015.

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D.

**Office of Consumer
Credit Commissioner**

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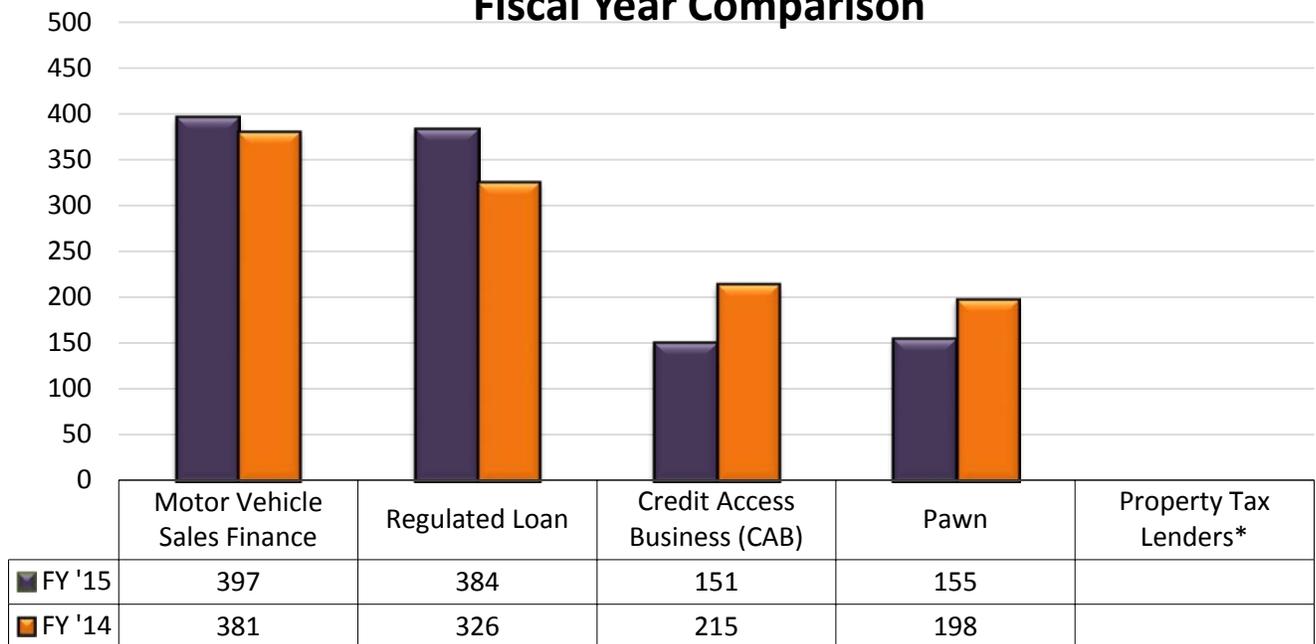


Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

Examinations conducted in the Motor Vehicle Sales Finance (MVSF) and Regulated Loan areas are slightly above those for last year for the same time period while Credit Access Business (CAB) and Pawn examinations for FY'15 are slightly behind those for the same time period in FY '14. Comparison of examinations conducted from September – December for Fiscal Years 2014 (FY'14) and 2015 (FY'15) are noted in the chart that follows.

Examinations Conducted: Sept - Dec Fiscal Year Comparison



*FY '14 examinations began February 2014

*FY' 15 examinations scheduled to begin February 2015

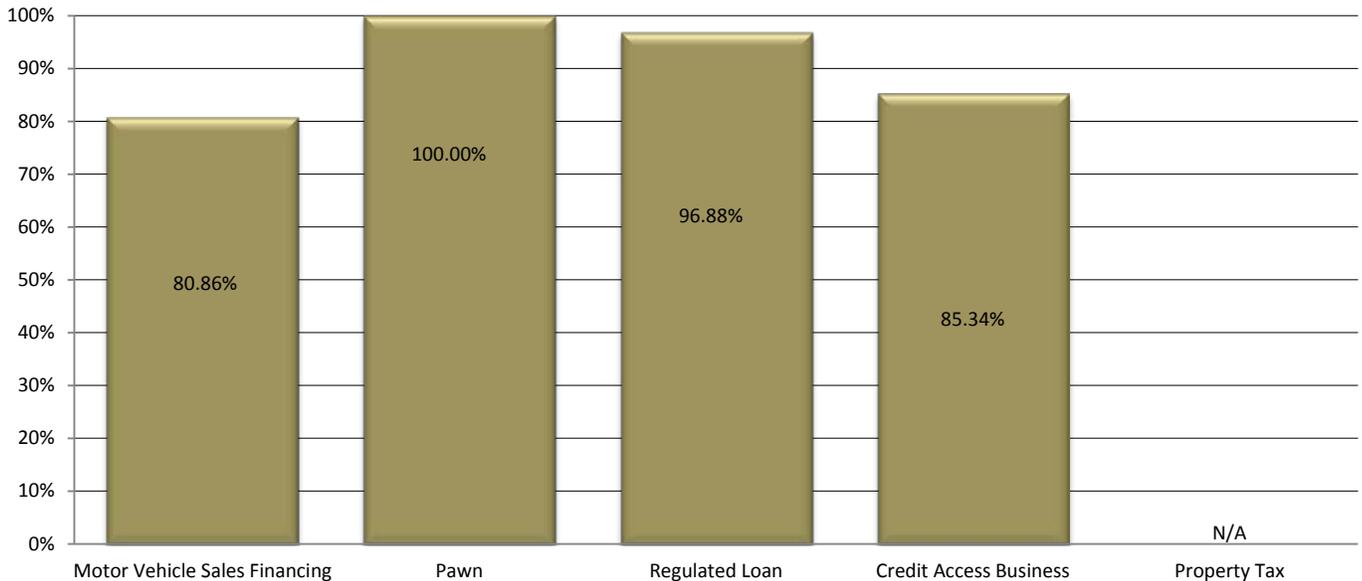
An Investigator I position in Consumer Assistance has been posted and interviews are currently being conducted. This position was previously held by Victor Moya who was selected to fill the Licensing Specialist position. Courtney Hamill, Financial Examiner II from the Houston region, resigned in January 2015.

The classroom portion of the first examiner training class for FY'15 was completed on January 16, 2015. The eight examiners from this class began on-the-job field training January 20, 2015.

Eric Fancher, Dallas Financial Examiner, presented at the Texas Department of Motor Vehicles (TxDMV) training seminar on November 20, 2014, in Lufkin. Christine Graham, Training Coordinator, made a similar presentation at the TxDMV seminars on January 14 and 15, 2015, in San Antonio. An overview of the Application Licensing Examination Compliance System (ALECS) has been incorporated by Mr. Fancher into the OCCC presentation. The first presentation with inclusion of this overview is scheduled for the TXDMV training in Waco on February 19, 2015. 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 7, 2015 in Austin.

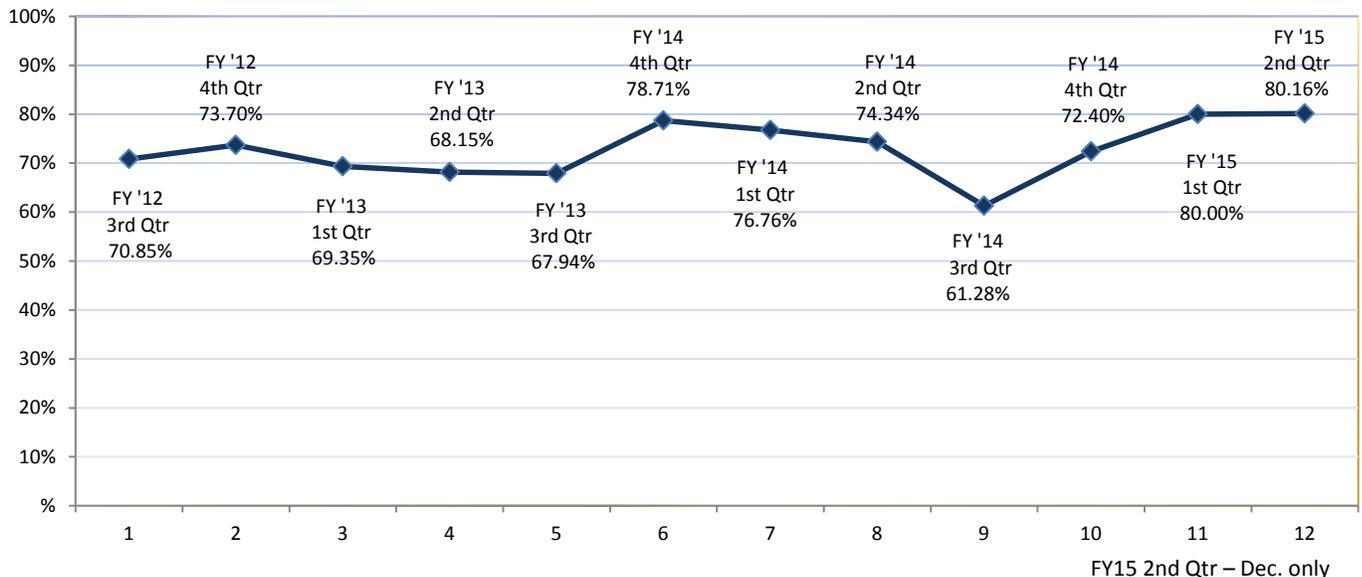
Acceptable levels of compliance in the five examination areas are noted in the chart below. While no Property Tax exams have been conducted yet in FY'15, we currently have four examinations scheduled.

Acceptable Levels of Compliance FY '15 (Sept - Dec 2014)



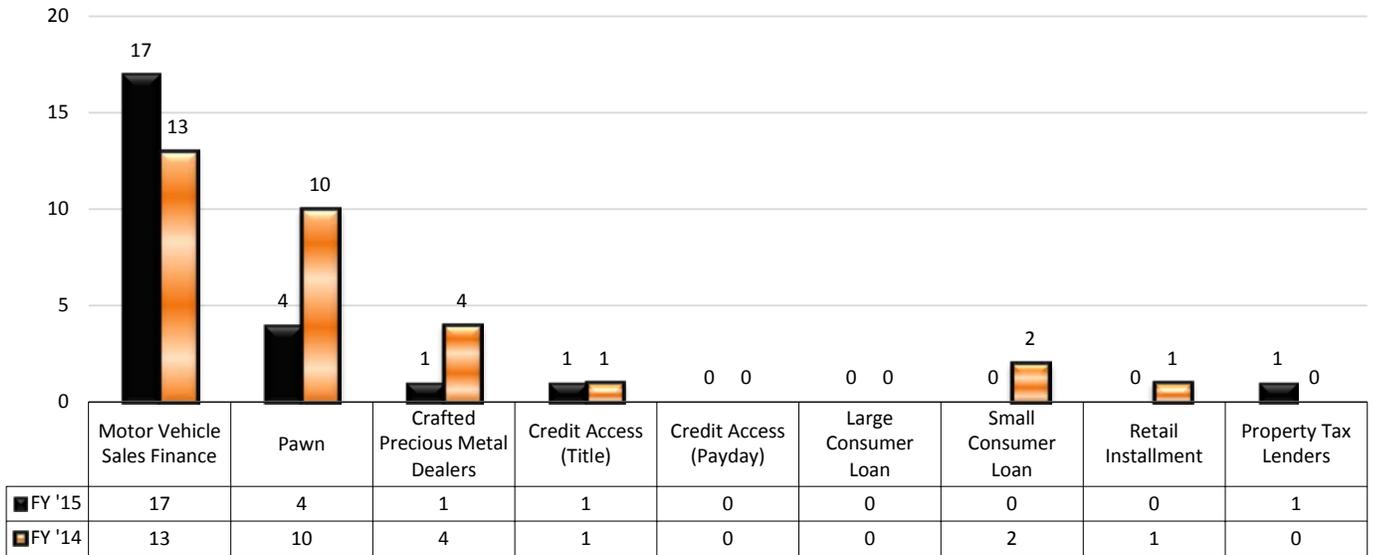
A rolling three year comparison of MVSF compliance rates by quarter is noted on the chart that follows.

MVSF: Acceptable Levels of Compliance Fiscal Year Comparison by Quarter

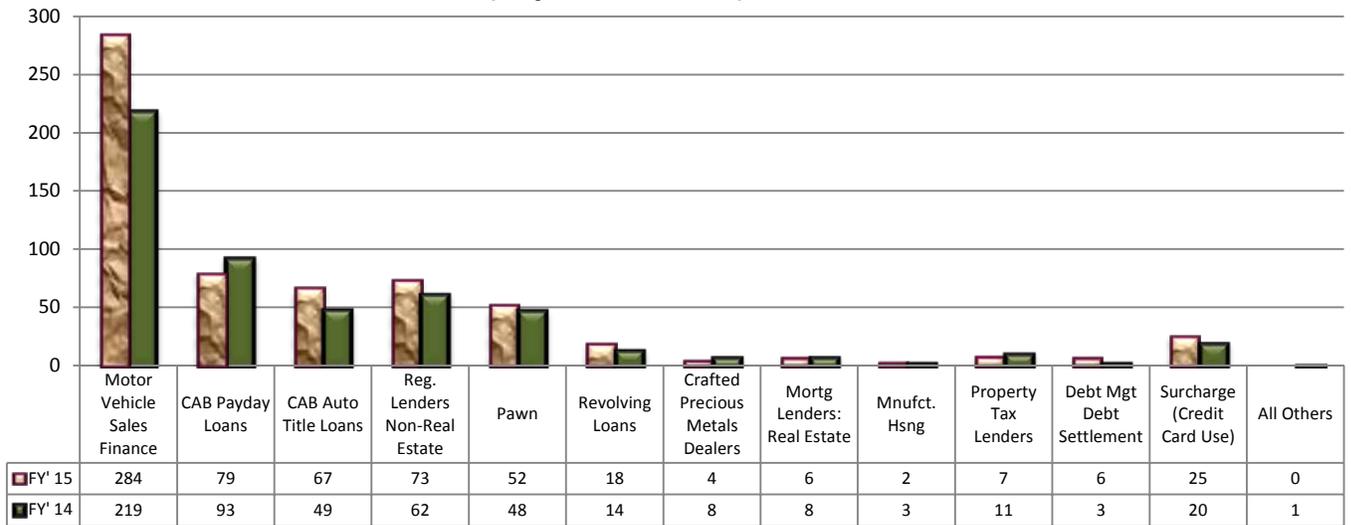


Investigations

Investigations Completed
FY '15 (Sept - Dec 2014) Total: 26
FY '14 (Sept - Dec 2013) Total: 31



Complaints Processed
FY '15 (Sept - Dec 2014) Total: 623
FY '14 (Sept - Dec 2013) Total: 539



For the reporting period in FY 2015, Motor Vehicle Sales Finance (MVSF) complaints are the largest category (45.43%). The complaint issues by type can be categorized as: repossessions (19%), unlicensed activity (12%), financing conditioned on subsequent assignments (10%), issues related to ancillary products and insurance (11%), payment postings/dispute of account balances (7%), consumer right of rescission (6%), mechanical issues (6%) and dispute of contracted price and other fees (6%).

CAB complaints were the second largest complaint category (payday 12.68% and title loans 10.75%). CAB payday loan complaints can be predominantly broken down as follows: allegations that they did not apply for

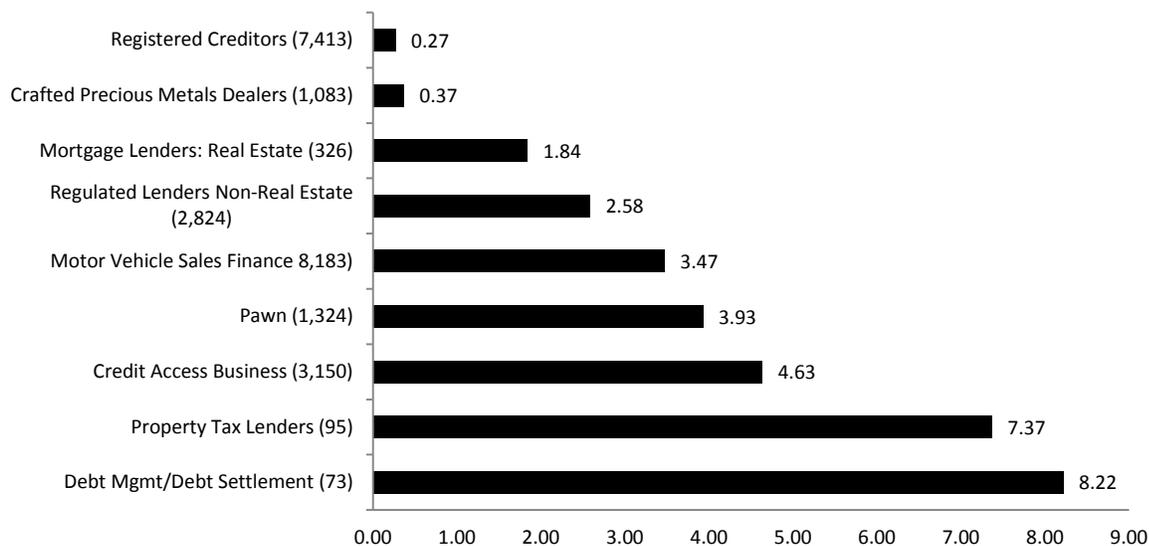
loans (24%), allegations of improper posting of payments-ACH and dispute of account balances (23%), collection practices (14%), consumers seeking assistance alleging financial hardship (13%) and complaints about fee amounts being charged (13%). CAB title loan complaints can be predominantly broken down by type as follows: charges and fees (19%), repossessions (18%), allegations of improper posting of payments and balance owed not decreasing (18%); and release of titles upon payoff (18%).

The third largest category of complaints for the reporting period was Regulated Lenders Non-Real Estate (11.72%). Regulated Lenders Non-Real Estate issues are predominately related to allegations of abusive collection practices (37%). Other issues are high interest rates (18%) allegations of improper posting of payments (16%), customer service (10%), and complaints about fees (8%).

Pawn was the fourth largest complaint category at 8.35%. Pawn issues primarily involved replacement of lost or damaged goods (25%). Other complaint issues were about redeeming pawned items (17%), forfeiture of goods (13%), pawn service charge (12%), victim assistance in stolen items (10%), monitoring the acceptance of goods (8%), and issues related to purchased goods (6%).

The ratio of complaints processed as compared to the total active licenses for each complaint category is charted below. In a comparison of the total number of complaints processed to the number of active license or registrant population, for FY '15, Debt Management/Debt Settlement complaints have the largest ratio of complaints per hundred licenses (8.22%). Property Tax Lenders had the second highest ratio (7.37%), followed by CAB complaints at 4.63%. The fourth highest ratio of complaints to total licensees was Pawn with 3.93%.

Ratio of Complaints Processed to Total Active Licenses or Registrants* FY '15 (Sept - Dec 2014)



■ Complaints per Hundred Licenses

*License-Registrant levels as of 12-31-14



Licensing Report

Renewals

The renewal period for Regulated Loan, Property Tax, Credit Access Business, Mortgage Loan Originators, and Refund Anticipation Lenders ended December 31, 2014. Expiration notices for Regulated Loan, Property Tax, and Credit Access Business licenses were sent January 22, 2014. Approximately 59% of business licensees renewed online through ALECS. The agency has seen a reduction in time and cost in processing renewals due to the online submission. Property Tax and Regulated Loan annual report forms for 2014 are available on the agency website.

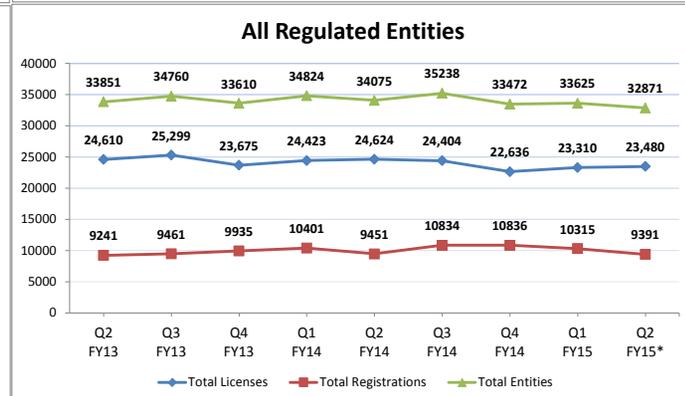
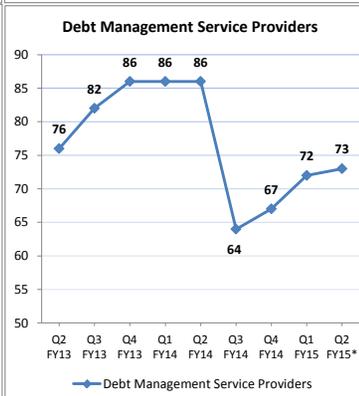
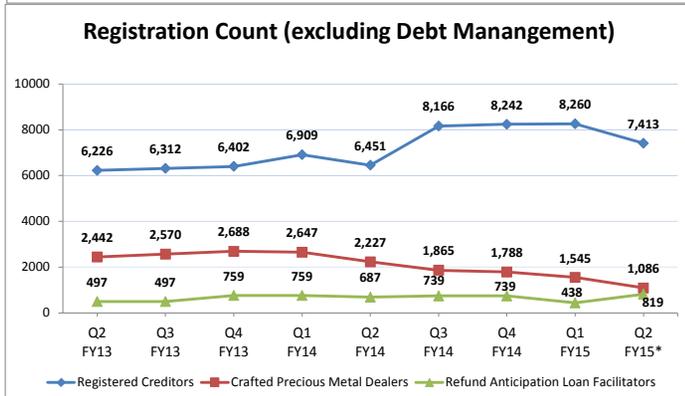
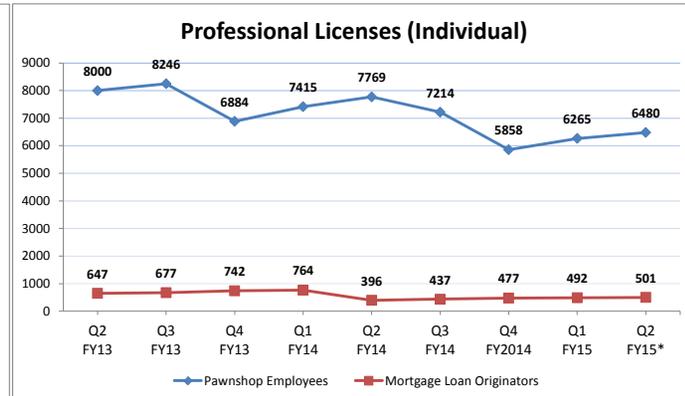
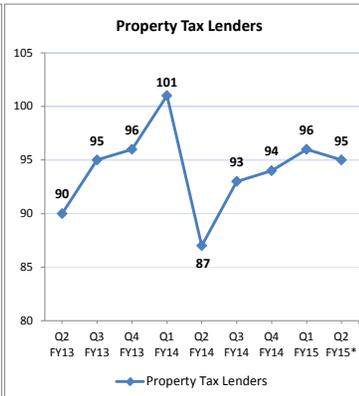
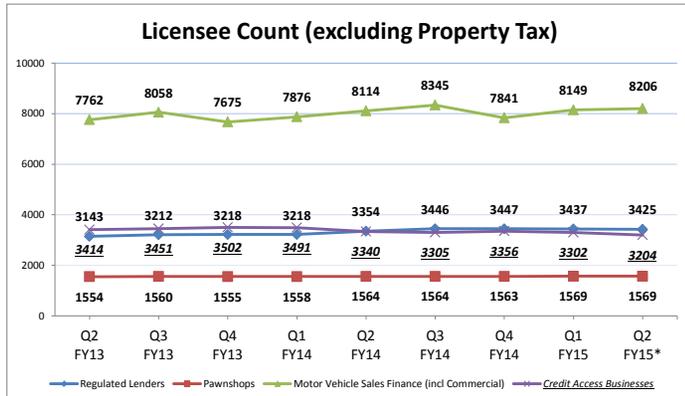
Applications Processing

The licensing department currently has a high number of pending applications. The department continues evaluating current processing procedures in an effort to decrease processing time and increase efficiency. Currently, 31% of business license applications are being submitted in ALECS. Beginning February 1, 2015, applications for new Motor Vehicle Sales Finance licenses must be submitted through ALECS. Other license and registration types will be phased in with the online submission requirements.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2013 and 2014, and the most recent data, as of December 31, 2014 with the exception of Crafted Precious Metals, which is reported as of January 31, 2015.

Number of OCCC Regulated Entities Quarterly Comparison FY13 & FY14 with Current Data



*Data for Q2 FY15 through 12/31/2014

*Data for Q2 FY15 for Crafted Precious Metals through 1/31/2015

CAB Reporting Update

The deadline to file 4th quarter and 2014 Annual reports was January 31, 2014. Approximately 96% of licensed locations filed both of their reports on time. Data for the 4th quarter and Annual reports are currently under review and will be published shortly. Presented is a historical comparison of timely reporting rates for 2014:

Reporting Period	Q1	Q2	Q3	Q4	Annual
Percent On Time	89.9%	97.6%	98.3%	97.5%	96.4%

Reports through the 3rd quarter of 2014 are currently compiled. The presented statistics compare data through three quarters of reporting (Q1, Q2, & Q3) with prior years. Although the total overall loan volume continues to decrease, the number and length of installment loans continues to trend upward.

Data Highlights (All Loan Types) Q1-Q3 combined	2014	2013	2012
Number of payday (deferred presentment) loans obtained	1,733,129	1,914,163	1,840,000
Number of auto title loans obtained	322,176	386,166	350,451
Number of payday refinances relating to loans made in the Qtr ¹	1,186,751	1,445,264	1,853,577
Number of total payday refinances ²	2,459,890	2,572,417	3,109,030
Number of auto title refinances relating to loans made in the Qtr ¹	170,642	185,077	213,359
Number of total auto title refinances ²	866,824	578,419	360,505
Number of vehicles repossessed under all auto title loans	32,134	28,134	26,973

Payday Loans Q1-Q3 combined	Single Installment		Multiple Installment	
	2014	2013	2014	2013
Number of consumers obtaining loans	913,186	1,094,663	492,282	396,892
Number of new loans obtained by CAB	1,171,386	1,454,960	561,743	459,203
Number of refinances on new loans in the quarter ¹	1,142,431	1,399,830	44,350	45,434
Number of total refinances ²	2,362,992	2,466,627	96,898	105,790
Average Loan Amount	\$ 478	\$ 457	\$ 538	\$ 507
Average Fee per \$100 borrowed	\$ 23.34	\$ 22.90	\$ 150.22	\$ 132.16
Average original term (in days)	19	19	152	143

Title Loans Q1-Q3 combined	Single Installment		Multiple Installment	
	2014	2013	2014	2013
Number of consumers obtaining loans	239,186	297,084	56,650	50,581
Number of new loans obtained by CAB	264,381	330,860	57,795	55,006
Number of refinances on new loans in the quarter ¹	161,372	176,417	9,270	7,660
Number of total refinances ²	830,200	551,520	36,624	26,899
Average Loan Amount	\$ 1,250	\$ 1,180	\$ 1,231	\$ 1,143
Average Fee per \$100 borrowed	\$ 19.58	\$ 21.71	\$ 114.69	\$ 73.38
Average original term (in days)	31	29	209	177

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.



Communications, Human Resources & Administration Report

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

Stakeholder Engagement and Communication

The agency continues to focus on stakeholder outreach and communication through various channels. Outreach and communication is achieved through live presentations, placement of articles in industry publications, participation in webinars, and the publication of advisory bulletins.

The OCCC held a meeting with interested stakeholders representing consumers and faith communities on February 2nd to discuss deferred presentment transactions, also known as payday loans, and auto title loan transactions for the upcoming session. The meeting had lively discussions and the identification of priorities for the 84th Legislative session. In addition, Commissioner Pettijohn spoke about the agency's proposed CAB bill which includes provisions that were in the original SB 1247 from last session along with new provisions.

Although the Legislature has not set any hearings at this time for the agency's respective committees in the House or Senate, the OCCC has begun briefing Senate Business & Commerce staff with the agency's issue areas.

Other areas of communication the agency continues to work on is the website overhaul project. Content integration has begun and the project is at the stage where the website begins to take shape. Web content is edited and revised before web developers begin to integrate it into the new website.

On January 28, 2015, Governor Greg Abbott sent a letter to all state agency heads calling for higher standards in the State's contracting and procurement process, including specific reforms aimed at restoring the public trust in the contracting process.

Governor Abbott expressed his support for contracting reform legislation announced previously by Sen. Jane Nelson (SD-12). Sen. Nelson's bill, SB 353, seeks to strengthen oversight of state government contracts through reforms that will also allow for greater transparency. Specifically, Sen. Nelson's legislation would, among other requirements:

- Require public disclosure of all no-bid contracts and a public justification for using such a procurement method;

- Require that all agency employees involved in procurement or contract management disclose any possible conflicts of interest;
- Prohibit contracts with business entities with which high-level agency leadership or staff have a financial interest;
- Require that the agency's board chair sign any contract valued at more than \$1 million or delegate signature authority to the agency head;
- For procurements of more than \$5 million, require the agency's central contracting office or procurement director to sign off on the procurement method and to indicate, in writing, to the Board and agency head any potential issue that could arise in the contract solicitation.

While the legislation is pending and remains a work in progress, the agency is expected to comply with the reforms outlined in Governor Abbott's letter effective February 1. The OCCC has begun the initial steps to effectively implement these requirements with all contracts moving forward.

Prior to Governor Abbot's directive for higher standards in the State's contracting and procurement process, the Agency had already started looking at ways to improve it. Pursuant to Gov't Code §2262.053, the Comptroller of Public Accounts (CPA) Texas Procurement and Support Services (TPASS) administers a system of training, continuing education and certification for state agency contract management personnel.

On December 16-17, 2014, Juan V. Garcia began the process to become a Certified Texas Contract Manager (CTCM). Certification is earned by successful completion of 3, two-day courses and a formal level of certification. He has attended the first class, CPA Texas Government Project Management. The class is designed to provide a basic understanding and working knowledge of each discipline's core elements and competencies that are vital to the success of any contract. It is hoped that completion of the next two classes, CPA Texas Government Contract Management, and Negotiation Skills and Strategies, as well as a level of formal certification, can be accomplished by the end of the fiscal year, pending class availability.

Human Resources

Since last reported to the Finance Commission, the agency has had several changes occurring within human resources. Several employees in the examination area have received promotions: one examiner promoted to FEII, two examiners qualified for a promotion from FE II to FE III, and two examiners were promoted from FE III to FEIV to serve as regional Assistant Supervisors.

Other changes included two staff members leaving (licensing manager and FE II); one to the private sector and the other to another state agency. The FTE count currently stands at 87.5 FTEs.

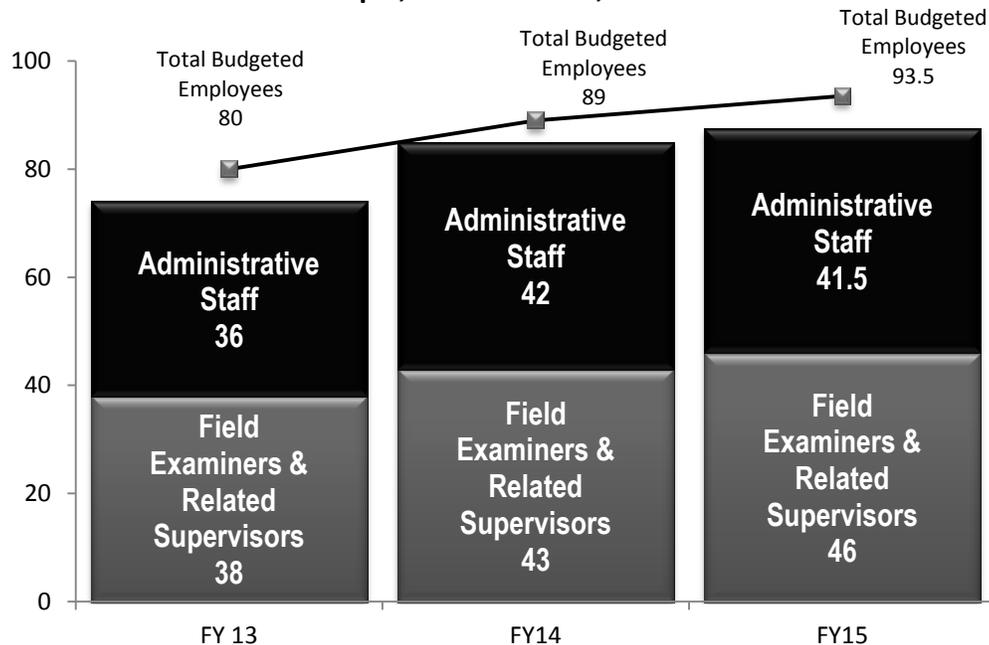
The agency's goal is to keep the turnover ratio below 15%, and currently stands well below this, at 7.16%.

Below is the recap of job postings for which the OCCC is actively recruiting.

FY 15 Vacancies	
Vacancy	Status
Investigator I	Active – Interviews in progress
Manager I/II	Active – Posted publicly 1/30/2015
Programmer III/IV	Active – Posted internally 2/4/2015

OCCC Employee Data FY 13 - FY 15

Sep 1, 2014 - Nov 30, 2014



Financial Literacy

Dana Edgerton, Financial Literacy Coordinator, traveled to Coastal Bend College in Alice, Texas to present “Budgeting Basics” to high school students for the 8th Annual TRIO Day.

Unlike student financial aid programs which help students overcome financial barriers to higher education, the Federal TRIO programs (*Talent Search, Upward Bound, Upward Bound Math/Science, Veterans Upward Bound, Student Support Services, Educational Opportunity Centers, and the Ronald E. McNair Post-Baccalaureate Achievement Program*) have been providing valuable supportive services to students from poor and working families to help them successfully enter college and graduate for over 40 years.

TRIO services include: assistance in choosing a college; tutoring; personal and financial counseling; career counseling; assistance in applying to college; workplace and college visits; special instruction in reading, writing, study skills, and mathematics; assistance in applying for financial aid; and academic support in high school or assistance to re-enter high school.

In addition, Dana has been asked to present a similar financial literacy topic (“Budgeting Basics”) at a later date to Beeville students.

Also, the Financial Literacy Coordinator continues to meet monthly with Financial Fitness Greater Austin (FFGA) leadership committee and general members to coordinate events for Financial Fitness week, April 19-26, 2015. The group will have an award ceremony and check presentation on April 22 for the Youth and Adult Essay Contest winners.



Accounting & IT Report

Accounting

The accounting department met deadline requirements when completing and submitting the Annual Report of Nonfinancial Statements to the appropriate agencies, following the specified guidelines. The department has completed Calendar Year End Processing for W-2s and 1099s. Staff has also begun researching vendors that provide electronic travel voucher software which would provide a more efficient means for staff to submit vouchers. The department recently filled the Accounting Technician II (Part-Time) position.

Information Technology-Legacy Modernization

ALECS phase I is in maintenance mode. Work continues on data cleanup, low-priority fixes and enhancements. Staff is reviewing business process changes that will streamline the online application review process.

The department has had a consultant in house part-time for 6 months to facilitate maintenance and data cleanup. This position will end in March, when a full-time position will be filled. The job description has been developed and posted internally.

Staff completed reviewing bids from 3 qualified DIR vendors to begin work on the next phase of the IT modernization. The low-scoring proposal has been eliminated and the 2 remaining vendors have submitted additional information to assist staff in making the best value choice before awarding the Statement of Work.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of November 30, 2014

	FY 2013	FY 2014	FISCAL YEAR 2015				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned to Consumers (000)	7,369	22,977	2,244				2,244
Regulated Lenders Examinations	1,098	1,106	258				258
Property Tax Lender Examinations	28	34	0				0
Pawnshop Examinations	697	593	110				110
Motor Vehicle Examinations	1,380	1,247	271				271
Credit Access Businesses Examinations	916	1,031	140				140
CONSUMER ASSISTANCE							
Telephone Complaints Received	1,151	1,067	226				226
Written Complaints Received	967	976	227				227
Total Complaints Processed	2,089	1,915	470				470
% of Written Complaints Closed within 90 Calendar Days	95.52%	90.60%	86.69%				86.63%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	366	321	106				106
Finalized	333	335	69				69
LICENSING AND REGISTRATION							
Licenses							
Regulated Loan Licenses	3,218	3,447	3,437				3,437
Pawnshop Licenses	1,555	1,563	1,569				1,569
Pawnshop Employee Licenses	6,884	5,858	6,265				6,265
Commercial MV Sales Fin. Licenses	14	16	17				17
Motor Vehicle Sales Finance Licenses	7,661	7,825	8,132				8,132
Property Tax Loan Licenses	96	94	96				96
NMLS-Mortgage Loan Originators	742	477	492				492
Credit Access Business Licenses	3,502	3,356	3,302				3,302
Registrations							
Registered Creditors	6,402	8,242	8,260				8,260
Crafted Precious Metal Dealers	2,688	1,788	1,545				1,545
Debt Management Service Providers	86	67	72				72
Refund Anticipation Loan Facilitators	759	739	438				438
Applications							
Business -- New	1,398	1,427	452				452
Business -- Change of Ownership	712	473	109				109
Pawnshop Employees -- New	2,576	2,011	669				669
HUMAN RESOURCES DATA							
Field Examiners Staffing	38	42	47				47
Total Staffing	74	83	89				89

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

Type/Strategy/Measure	2015 Target	2015 Actual	2015 YTD	Percent of Annual Target
Output Measures-Key				
1-1-1	COMPLAINT RESOLUTION			
	1. # COMPLAINTS CLOSED			
Quarter 1	2,100	470	470	22.38%
	2. # INVESTIGATIONS CLOSED			
Quarter 1	84	16	16	19.05% *
	The number of completed investigations in the first quarter was one examination short of being in the goal range, due to investigative staff assuming additional duties in response to a senior examiner's medical leave of absence.			
2-1-1	EXAMINATION AND ENFORCEMENT			
	1. # COMPLIANCE EXAMINATIONS PERFORMED			
Quarter 1	3,864	780	780	20.19%
2-2-1	LICENSING			
	1. # BUSINESS APPLICATIONS PROCESSED			
Quarter 1	2,200	381	381	17.32%
	The number of business applications processed is under target due to staffing changes and training. Numbers are expected to be on target in the next quarter.			
	2. # INDIVIDUAL LICENSES PROCESSED			
Quarter 1	2,750	715	715	26.00%
3-1-1	# CONSUMERS RECEIVING FINANCIAL EDUCATION			
Quarter 1	300	32	32	10.67% *
	Staff conducted one face-to-face presentation in the first quarter. There will be more presentation opportunities as the year progresses.			

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



Legal Department Report

Michael Rigby, General Counsel

February 5, 2015

Enforcement Report

In *Joseph V. Greer d/b/a Greer Auto Sales*, Cause No. C3509-L11-096, the OCCC issued an order to cease & desist against Greer Auto Sales for unlicensed activity under Chapter 348 of the Texas Finance Code. On June 9, 2014, the OCCC issued a notice of hearing on Greer Auto Sales' appeal of the order to cease and desist. The hearing was held on August 6, 2014, before Holly Compton-Noelke, Administrative Law Judge. On October 15, 2014, the ALJ issued a proposal for decision recommending the order to cease and desist become final and enforceable. On November 21, 2014, Commissioner Pettijohn adopted the recommendation of the proposal for decision and issued a final order upholding the order to cease and desist. Greer Auto Sales did not file a timely motion for rehearing with the OCCC.

In June of 2014, the OCCC issued 111 Preliminary Reports Assessing Administrative Penalties against regulated loan licensees who failed to timely file their 2013 Annual Report. Regulated loan licensees are statutorily required to file an annual report by May 1 of each year. Of the 111 late filers, 107 licensees either filed their report and paid the administrative penalty or were given permission to surrender their license. Four licensees did not file their report and pay the penalty or seek permission to surrender their license. On December 8, 2014, the OCCC issued a notice of hearing for revocation against the following four licensees: (1) *Valerio, Maria d/b/a La Rosita Finance Company* (Cause No. C3561-L15-024), (2) *North Texas Auto Services Inc. d/b/a EBUYMOTORZ* (Cause No. C3569-L15-032), (3) *M L K Financial Inc.* (Cause No. C3578-L15-041), and (4) *El Valle Finance LLC* (Cause No. C3582-L15-045). The hearings were held on January 27, 2015, before Holly Compton-Noelke, Administrative Law Judge. The proposals for decision in these matters are currently pending with the ALJ.

Administrative Rule Report

At the February meeting, the agency is presenting the following adoptions:

- Amendments providing updated guidelines on the costs allowed for property tax loans,
- Amendments allowing the agency to refund state fees for residential mortgage loan originators in appropriate situations, and
- Amendments conforming registration provisions for retail creditors with the agency's current use of an online system.

At upcoming meetings later this year, the agency plans to present rule actions regarding the following issues:

- Amendments to update the procedures for plain language non-standard contract submission, and
- Amendments to streamline the licensing process and provide regulatory burden reduction.

Performance Report

The following table is an overview of enforcement actions completed by the OCCC for the last three fiscal years and the current fiscal year-to-date as of January 31, 2015. Since December 3, 2014 (the date of the OCCC's last report), the OCCC has completed the first two months of the second quarter of fiscal year 2015. These figures only reflect actions that have been fully resolved with a final order; actions that are still pending are not included in the table. This data also does not account for actions to deny applications of those who fail to show eligibility for a license or assistance provided to license applicants requiring additional documentation to complete their applications. The OCCC completed 35 application denial actions in fiscal year 2013 and 2 denial actions in fiscal year 2014. As of January 31, 2015, the OCCC has completed 2 denial actions in fiscal year 2015. It is difficult to predict the types of cases the legal department will pursue, as many factors impact how each enforcement matter will evolve. The following table provides a snapshot of completed enforcement actions during the listed time period.

Enforcement Actions Completed as of January 31, 2015				
	FYTD 2015	FY 2014	FY 2013	FY 2012
Revocation / Suspension Actions				
Regulated Loan License	22	10	3	5
Pawnshop License	0	1	1	1
Pawnshop Employee License	1	1	2	1
Credit Access Business	0	4	0	1
Motor Vehicle Sales Finance License	0	3	3	1
Property Tax Lender License	0	4	0	0
Total Revocation / Suspension Actions	23	23	9	9
Other Actions				
Cease & Desist Regulated	0	0	1	0
Cease & Desist Pawn	0	0	0	0
Cease & Desist Pawn Employee	0	0	0	0
Cease & Desist Motor Vehicle	6	8	13	0
Cease & Desist 345	0	0	1	0
Cease & Desist 394	3	1	1	0
Cease & Desist Property Tax	0	2	1	0
Cease & Desist Credit Access Business	0	4	1	0
Cease & Desist Unlicensed	0	2	10	18
Administrative Penalty Regulated	1	121	144	103
Administrative Penalty Pawn	0	6	9	6
Administrative Penalty Pawn Employee	1	8	8	6
Administrative Penalty Motor Vehicle	20	87	112	85
Administrative Penalty Property Tax	0	18	12	12
Administrative Penalty Credit Access Business	63	56	52	0
Administrative Penalty Crafted Precious Metal Dealer	0	1	0	0
Total Other Actions	94	314	365	230
Total Enforcement Actions Closed	117	337	374	239

From December 3, 2014, to January 31, 2015, the agency:

- issued 44 final orders,
- opened 23 cases in order to issue preliminary reports,
- opened 1 case in order to issue an administrative injunction,
- held 4 administrative hearings, and
- dismissed 4 administrative hearings.

The agency has 3 administrative hearings scheduled between February 1, 2015, and March 31, 2015.

Litigation

Rowell v. Pettijohn:

In March 2014, a group of merchants filed a complaint in federal district court against Leslie Pettijohn in her official capacity, to enjoin enforcement of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. 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 July 2014, the OCCC filed a motion to dismiss the lawsuit. The motion argues that Section 339.001 is a regulation of pricing and economic conduct, rather than a speech regulation subject to First Amendment protections, and that the section is not void for vagueness.

On February 4, 2015, the court granted the OCCC's motion and dismissed the lawsuit. The court's opinion agreed that Section 339.001 is a regulation of pricing and economic conduct rather than speech, and that it is not void for vagueness. The court issued a final judgment on the same day.

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 case number is 1:14-cv-00190-LY.

Property Tax Lender TILA Litigation:

Two federal district judges in San Antonio have recently issued conflicting decisions about whether the federal Truth in Lending Act (TILA) applies to Texas property tax lenders. In one case, the court held that TILA does not apply to property tax lenders, and granted the property tax lender's motion to dismiss the borrower's TILA claims. *Billings v. Propel Financial Services, LLC*, No. 5:14-cv-00764-OLG, 2014 WL 7448248, 2014 U.S. Dist. LEXIS 179738 (W.D. Tex. Nov. 28, 2014). However, in the other case, the court held that TILA does apply to property tax lenders, and denied the lender's motion 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). Both decisions have been appealed to the Fifth Circuit Court of Appeals.

There are three other pending cases involving the same issue: *Ramos v. FGMS Holdings, LLC*, No. 5:14-cv-00860-FB (filed Oct. 1, 2014); *Orosco v. Ovation Lending, LLC*, No. 5:14-cv-00897-XR (filed Oct. 14, 2014); and *Castano v. FGMS Holdings, LLC*, No. 5:14-cv-00949-OLG (filed Oct. 28, 2014).

Credit Access Business Ordinance Litigation:

There have been several recent developments in litigation over ordinances that regulate Texas credit access businesses (CABs).

In December 2014, a San Antonio municipal court found a CAB manager guilty of violating San Antonio's CAB ordinance. The defendant is Erika Escobar, and she is the manager of a Power Finance location in San Antonio. After a three-day jury trial, she was found guilty of failing to register with the city and refusing to allow the San Antonio Police Department to inspect records.

In October 2014, a Dallas municipal court refused to dismiss a criminal case brought under Dallas's CAB ordinance. *State of Texas v. CBA Leasing Ltd. d/b/a Power Finance*, No. Z13-000856 (Mun. Ct. No. 8, City of Dallas Oct. 24, 2014) (order denying defendant's motion to quash). The City of Dallas brought a case against a CAB for engaging in business without the local registration required under Dallas's CAB ordinance. The CAB argued that Dallas's ordinance was preempted by state law. The court found that the ordinance was consistent with state law and that it was not preempted, so it denied the CAB's motion to quash the complaints against it.

Several CABs have sued cities, arguing that CAB ordinances are preempted under state law. The Dallas court of appeals rejected a challenge to Dallas's CAB ordinance, finding that the CABs had not demonstrated a sufficient harm to their property interests. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.). There are several other cases pending in state district court, including *First Capital Money Center Ltd. d/b/a Power Finance Texas v. City of Houston*, No. 2014-67722 (133d Dist. Ct., Harris Co.) (filed Nov. 19, 2014); *Ace Cash Express, Inc. v. City of Denton*, No. 2013-10564-16 (16th Dist. Ct., Denton Co.) (filed July 19, 2013); and *Cash Station, Ltd. d/b/a Power Finance v. City of San Antonio*, No. 2012-CI-20678 (285th Dist. Ct., Bexar Co.) (filed Dec. 2012).

Interpretation Requests

From December 3, 2015, to January 31, 2015, the agency did not receive any requests for official interpretations. There were no pending interpretation requests as of January 31, 2015.

Open Records Requests

From December 3, 2015, to January 31, 2015, the OCCC has processed and responded to 40 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Office of Consumer Credit Commissioner

Legislative Issues for 2015

Criminal history access:

- Amend Tex. Gov't Code § 411.095 to specify that OCCC may obtain DPS criminal history information for credit access businesses, debt management service providers, and applicants for employment with the OCCC.
- Specify that OCCC may release criminal history information with the consent of the person who is the subject of it.
- Make conforming changes to criminal history provisions of Fin. Code Ch. 14.

Credit access businesses:

Note: The first four of these issues were addressed in SB 1247 (2013)

- Clarify confidentiality of quarterly & annual reports.
- Specify that OCCC will produce aggregate reports at statewide level with MSA info.
- Add a definition of "services" to specify the services that a CAB provides.
- Clarify examination authority, including authority to take oaths during an examination.
- Specify that payments for multiple-payment payday and title loans should be due on specific dates.
- Specify that post-maturity CAB fees are limited to court costs, attorney's fees, and reasonable repossession costs (for title loans).
- Clarify prohibitions on filing criminal charges and violating debt collection laws.
- Clarify TFEE investment standard.

Crafted precious metal dealers:

Note: The first four of these issues were addressed in SB 288 (2013)

- Specify OCCC's authority to inspect records and take oaths.
- Allow transaction "report" and "list" in the same document.
- Add recordkeeping requirement based on date of disposal of item.
- Clarify "crafted precious metal" definition.
- Amend Fin. Code Ch. 14 to add crafted precious metal dealers to OCCC's cease-and-desist, injunction, and investigation authority.

Technical corrections:

- **Default after notice of hearing:** Amend various Finance Code provisions to specify that the agency may take certain actions (such as revocation) if a person fails to respond to a notice of hearing, in accordance with the Texas Administrative Procedures Act. The amendments would specify that the OCCC may take each action after notice and an opportunity for a hearing.
- **Property tax lenders:** Clarify record retention period in Tex. Fin. Code Ch. 351; amend 351.0022 to prohibit waivers of requirements imposed by Tex. Tax Code Ch. 32.
- **Itemized charges under 348:** Amend 348.005 to allow accessories and services related to the sale to be included as itemized charges, rather than part of the cash price.
- **Vehicle protection products:** Replace outdated reference to “theft protection plan” in 348.208 with a correct reference to vehicle protection product warranties under Chapter 2306 of the Occupations Code.
- **342 single equivalent rate:** Amend 342.201 to allow single equivalent rate instead of graduated rates for the three-tiered rate under 342.201(e).
- **Research program:** Repeal research and reporting requirements in Tex. Fin. Code § 11.305(a)–(c) due to redundancy with other reporting requirements and TFEЕ grants.
- **Confidentiality:** Amend 14.2015(b) to specify that licensees may waive confidentiality only for documents that they provided or that were provided to them.
- **Restitution:** Amend Chapter 14, Subchapter F to clarify that a restitution order has the same procedural requirements as an administrative penalty.
- **Clean up 345 NSF fee provision:** Amend 345.106 to delete \$15 NSF fee limitation and replace with a reference to Tex. Bus. & Comm. Code § 3.506.
- **Clean up 303.402 provision on Subtitle B max rate:** Amend 303.402(a) to replace “rate or amount of time price differential” with “interest or time price differential.”
- **Citation corrections for federal law:** Amend Finance Code citations to federal statutes and rules to ensure that they are up-to-date.

Rule Item/Purpose	Proposal Date	Adoption Date/Status
<p>Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - Adopt Amendments (from Rule Review) 7 TAC, Part 1, Chapter 2, §2.104, Concerning Application and Renewal Fees</p> <p>To implement changes resulting from the commission's review of Chapter 2 under Texas Gov't Code, §2001.039; to provide clarification regarding the refunding of application and renewal fees for RMLO applicants and licensees regulated by the OCCC, allowing the OCCC to refund state RMLO fees in appropriate situations</p>	12/12/14	Presented for Adoption 02/20/15
<p>Retail Creditors - Adopt Amendments (from Rule Review) 7 TAC, Part 5, Chapter 86, §86.102, Concerning Annual Registration Fees</p> <p>To implement changes resulting from the commission's review of Chapter 86 under Texas Gov't Code, §2001.039; to update provisions concerning evidence of registration and related fees to conform the rule with the agency's current use of an online licensing and self-service portal; to provide improved grammar, punctuation, and other technical corrections</p>	12/12/14	Presented for Adoption 02/20/15
<p>Property Tax Lenders - Adopt Amendments 7 TAC, Part 5, Chapter 89, §§89.102, 89.207, 89.504, 89.601, & 89.802</p> <p>To provide updated guidelines on the costs allowed for property tax loans, including the replacement of tiers with a general fee cap for reasonable closing costs; to update definitions, recordkeeping, and disclosure provisions; to provide disclosure of affiliated businesses used by property tax lenders; to provide guidelines for the use of legitimate discount points</p> <p>Stakeholders meeting conducted 09/05/14 Precomment draft distributed 09/19/14 Original proposal published 10/31/14 Re-proposal published 12/26/14</p>	Re-Proposed 12/12/14	Presented for Adoption 02/20/15

Rule Item/Purpose	Proposal Date	Adoption Date/Status
<p>Plain Language Contracts - Proposed Amendments 7 TAC, Part 5, Chapter 84, §84.802 and §84.806 7 TAC, Part 5, Chapter 90, §90.103 and §90.104</p> <p>To update plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes</p>	<p>04/17/15</p>	
<p>Licensing Streamlining Provisions - Proposed Amendments 7 TAC, Part 5, Chapters 83, 84, 85, 88, and 89</p> <p>To streamline licensing procedures and provide regulatory burden reduction</p>	<p>TBD 2015</p>	
<p>Home Equity Lending - Adopted Amendments 7 TAC, Part 8, Chapter 153</p> <p>Implemented the Texas Supreme Court's decision in <i>Finance Commission of Texas v. Norwood</i></p>	<p>06/20/14</p>	<p>Adopted 12/12/14</p> <p>Effective 01/01/15</p>

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D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators

PURPOSE: The purpose of the amendments is to implement changes resulting from the commission's review of Chapter 2 under Texas Government Code, §2001.039. The amendments provide clarification regarding the refunding of application and renewal fees for RMLO applicants and licensees regulated by the OCCC, allowing the OCCC to refund state RMLO fees in appropriate situations.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §2.104 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC §2.104.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 2. Residential Mortgage Loan Originators

Applying for Licensure with the Office of Consumer Credit Commissioner

Under the Secure and Fair Enforcement for Mortgage Licensing Act

§2.104. Application and Renewal Fees

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §2.104, concerning Application and Renewal Fees for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act.

The commission adopts the amendments without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10116).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §2.104 is to implement changes resulting from the commission's review of Chapter 2 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 2 was published in the *Texas Register* on November 7, 2014 (39 TexReg 8745). The agency did not receive any comments on the notice of intention to review.

The adopted amendments to §2.104 provide clarification regarding the refunding of application and renewal fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators (RMLOs), the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Section 2.104 sets out the required application and renewal fees for OCCC applicants and licensees. These fees must be submitted to the Nationwide Mortgage Licensing System and Registry (NMLS). The amendments are contained in subsection (a), which previously stated that all fees may not be refunded or transferred without exception.

The NMLS does not provide refunds of NMLS system fees, but defers to individual states whether the state in question wishes to refund the state portion of the application or renewal fee. The OCCC has frequently encountered extenuating circumstances that would warrant the refunding of state RMLO fees. The amendments allow the OCCC to refund state RMLO fees in appropriate situations.

Accordingly, the adopted amendments revise §2.104(a) by adding a new sentence after the existing last sentence, resulting in the last two sentences to read as follows: "All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees."

These amendments are adopted under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the amendments

are also adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements as necessary for payment of fees to apply for or renew licenses through the NMLS, and under Texas Finance Code, §14.107, which authorizes the commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, or 351 at amounts or rates necessary to recover the costs of administering those and other chapters.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

§2.104. Application and Renewal Fees.

(a) Required submission to NMLS. To become an RMLO, an OCCC applicant must submit the required fees to NMLS. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees.

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at an amount not to exceed \$300 and the RMLO annual renewal fee not to exceed \$300 for applications filed with the OCCC. Annual renewal fees are

due to NMLS by December 31 of each year. A third party operates NMLS and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee. The Finance Commission of Texas sets the RMLO reinstatement fee at \$50 for applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each year.

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 20, 2015.

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

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D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors

PURPOSE: The purpose of the amendments is to implement changes resulting from the commission's review of Chapter 86 under Texas Government Code, §2001.039. The amendments update provisions concerning evidence of registration and related fees to conform the rule with the agency's current use of an online licensing and self-service portal. The amendments also provide improved grammar, punctuation, and other technical corrections.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §86.102 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC §86.102.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 86. Retail Creditors
§86.102. Annual Registration Fees

The Finance Commission of Texas (commission) adopts amendments to §86.102, concerning Annual Registration Fees for retail creditors.

The commission adopts the amendments without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10121).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §86.102 is to implement changes resulting from the commission's review of Chapter 86 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 5, Chapter 86 was published in the *Texas Register* on November 7, 2014 (39 TexReg 8745). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide streamlined procedures, improved grammar and punctuation, and technical corrections. Revisions concerning the evidence of registration and related fees have been updated to conform the rule with the agency's current use of an online licensing and self-service portal. The individual purposes of the amendments to each subsection are provided in the following paragraphs.

In subsection (b) concerning annual fee, the verb "shall" has been replaced by "will" or "must" as appropriate, since the latter language is reflective of a more modern and

plain language approach in regulations. The date reference in subsection (b)(3) has been revised as "October 31," in place of the former "October 31st," in accordance with updated grammatical guidelines. Additionally, a comma has been included after "e.g." in the parenthetical at the end of subsection (b)(5) to provide more accurate punctuation.

Subsection (c) has experienced several changes in order to incorporate the agency's implementation of an online licensing and self-service portal, along with technical corrections. First, the agency's acronym "(OCCC)" has been added to the first sentence to allow appropriate use later in the rule. Due to the new online system, the agency has discontinued the issuance of renewal decals to registered retail creditors. As a result, the second change to this subsection replaces the word "decal" with the word "certificate." Third, to complete the removal of references to the decals no longer issued, everything after the word "section" has been deleted, including former paragraphs (1) and (2). And fourth, the following sentence has been added as the new final sentence to subsection (c): "A registrant may print a copy of its registration certificate through the OCCC's online licensing portal."

Adopted new subsection (d) provides that the OCCC will mail a registration certificate for a fee of \$10 if a registrant does not print its certificate through the online portal. This fee is the same amount that the agency charges to mail duplicate licenses for its other regulated entities.

The amendments are adopted under Texas Finance Code, §345.352(b), which authorizes the commission to establish by rule procedures to facilitate the registration and collection of fees for retail creditors. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 345.

§86.102. Annual Registration Fees.

(a) Locations requiring registration. An annual registration fee is required for each location operated by a retail seller, creditor, holder or assignee.

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will ~~shall~~ be payable as follows:

(1) A retail seller, creditor, holder, or assignee must ~~shall~~ pay a registration fee for every chapter under which business is conducted.

(2) A retail seller, holder, creditor, or assignee who begins business under Texas Finance Code, Chapter 345 or 347 must ~~shall~~ pay the annual fee within 60 days after the first day of commencing regulated operations.

(3) The annual fee for each subsequent calendar year will ~~shall~~ be due and payable by October 31 ~~31st~~ of each year.

(4) The registration is not transferable between locations. Each new location must comply with the provisions in paragraph (2) of this subsection.

(5) No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the personnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate ~~decals~~ evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal. ~~[This decal shall be:]~~

~~[(1) affixed to a door or window of the principal entrance; or]~~

~~[(2) displayed in a prominent location readily visible to the consumer.]~~

(d) Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of \$10 per certificate mailed.

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 20, 2015.

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 Adoption of Amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802, Concerning Property Tax Lenders

PURPOSE: In general, the purpose of the amendments is to provide updated guidelines on the costs allowed for property tax loans. In order to fully incorporate the updated cost provisions, other rules concerning definitions, recordkeeping, and disclosures include related amendments. The major areas of amendment involve the replacement of tiers with a general fee cap for reasonable closing costs, the disclosure of affiliated businesses used by property tax lenders, and guidelines for the use of legitimate discount points.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders
§§89.102, 89.207, 89.504, 89.601, & 89.802

The Finance Commission of Texas (commission) adopts amendments to §§89.102, 89.207, 89.504, 89.601, and 89.802 concerning Property Tax Lenders.

The commission adopts the amendments to §§89.102, 89.504, and 89.802 without changes to the re-proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122). The commission adopts the amendments to §89.207 and §89.601 with changes to the re-proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122).

The commission received eighteen written comments on the re-proposal from the following organizations and entities: Atlas, Hall & Rodriguez, LLP; Harrison Duncan, PLLC; Homefront Tax Loans; Home Tax Solutions; Hunter-Kelsey of Texas, LLC; the Law Firm of Daniel J. Young PLLC; the Law Office of Nathan C. Cace, PC; Ovation Financial Services; Propel Financial Services, LLC; Protect My Texas Property; Resolution Finance LLC; Sombrero Capital, LLC; Tax Advances LLC; Tax Ease; the Texas Mortgage Bankers Association; the Texas Property Tax Lienholders Association; Texas Property Tax Loans; and USPTL LLC.

The following is a summary of the issues raised by the commenters, as well as the number of comments received on each particular issue: (1) disclosure of affiliated businesses (one comment), (2) the general maximum fee limit on closing costs (six comments), (3) clarification on costs for

additional parcels and costs necessary to address title defects (two comments), and (4) the use of legitimate discount points (eighteen comments).

All eighteen commenters discussed the re-proposed provisions on legitimate discount points. The comments fell into four main groups. Three comments supported the rule amendments as re-proposed. Two comments were generally supportive, but suggested additional disclosures for discount points. Eight commenters argued that discount points should be prohibited, contrary to the re-proposed rule, which acknowledged circumstances where discount points would be authorized. Five commenters argued that the rule went too far in regulating discount points.

A more detailed analysis of the comments related to discount points is included after the purpose discussion regarding §89.601(d). Additionally, comments on the remaining issues will be addressed by discussion following the purpose of the provisions receiving comments.

In general, the purpose of the adopted amendments is to provide updated guidelines on the costs allowed for property tax loans. The major areas of amendment involve the replacement of tiers with a general fee cap for reasonable closing costs, the disclosure of affiliated businesses used by property tax lenders, and guidelines for the use of legitimate discount points.

The rule provisions regarding reasonable closing costs were initially adopted in 2008, with maximum amounts categorized into five tiers based on the size of the loan. Since that time, the property tax loan industry has seen growth and increased competition, resulting in changing costs over the last five years. The agency believed it to be an appropriate time to revisit the structure and amounts of costs outlined in §89.601, Fees for Closing Costs, as well as explore guidelines for post-closing costs.

The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced rule action for the commission on the costs allowed for property tax loans. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and held a stakeholders meeting where several stakeholders provided verbal statements regarding the issues presented in the ANPR. Subsequently, a number of stakeholders provided written comments, elaborating on their statements from the stakeholders meeting.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a rule draft to the stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting amendments.

The agency carefully evaluated the stakeholders' comments and incorporated numerous recommendations offered by the stakeholders into the rules as proposed. As a result of the feedback provided from

stakeholders prior to the proposal, provisions concerning definitions, recordkeeping, and disclosures were in need of related amendments to fully incorporate the updated cost provisions. Thus, in addition to §89.601, the amendments also include changes to §89.102, Definitions; §89.207, Files and Records Required; §89.504, Requirements for Disclosure Statement to Property Owner; and §89.802, Payoff Statements. Also, certain technical corrections have been made in order to better align these rules with prior changes made to other sections within the chapter. The following paragraphs outline the purposes of each rule amendment.

I. Affiliated businesses and recordkeeping

The amendments to §89.102, concerning Definitions, contain a few technical corrections, as well as the addition of the definition of "Affiliated business."

The first technical correction deletes the title of Texas Finance Code, Chapter 351 ("Property Tax Lenders"), along with the deletion of the short title and citation in two instances in the rule. When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary.

The second technical change replaces the verb "shall" with "will" in the introductory paragraph. Similar changes have been made to numerous rules in Chapter 89 in the past, as well as other chapters under the agency's authority. The agency believes that the latter language is reflective of a more modern and plain language approach in regulations.

The definition of "Affiliated business" has been added as new (renumbered) §89.102(1). The purpose of this definition is to implement recordkeeping requirements in §89.207 and disclosure requirements in §89.504, which will be discussed further under the purpose paragraphs for those sections.

New paragraph (1) provides that an "Affiliated business" is a person that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. The common ownership or controlling interest may occur either directly or indirectly. The 10% threshold has been selected to maintain consistency with the ownership disclosure requirements found in the following property tax lender licensing regulations: §89.302, concerning Filing of New Application; §89.303, concerning Transfer of License; and §89.304, concerning Change in Form or Proportionate Ownership. The disclosure of a 10% ownership or controlling interest is also well established in similar regulations for industries under the agency's authority. With the addition of new paragraph (1), the remaining definitions existing in §89.102 have been renumbered accordingly.

In §89.207, concerning Files and Records Required, the amendments provide clarification regarding records that must be retained relating to legitimate discount points, payments made to attorneys, and records regarding affiliated businesses. New provisions are contained in §89.207(3)(A)(ix) concerning receipts or invoices along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, and in

§89.207(3)(A)(x) concerning legitimate discount points. The purpose of §89.207(3)(A)(x) will be outlined under §89.601(d), a new subsection that provides guidelines for the use of legitimate discount points in connection with property tax loans.

The purpose of §89.207(3)(A)(ix) is to implement another new provision that has been added in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. Section §89.601(c)(5) allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in §89.601(c)(5) (discussed later in this adoption). The purpose of §89.601(c)(5) is to ensure that property tax lenders can be compensated for costs incurred to address title defects. As a result, the recordkeeping provision in §89.207(3)(A)(ix) has been added to clarify what records must be maintained to establish compliance.

A clarifying phrase has been added to §89.207(3)(I)(ii) requiring the maintenance of "specific descriptions of services performed by the attorney." On the issue of affiliated businesses, new §89.207(3)(I)(iii) requires that records relating to amounts paid to affiliated businesses must be maintained as well. Additionally, this adoption includes new paragraph (7) concerning general records that must be retained by the property tax lender regarding any relationship the lender may have with one or more affiliated businesses.

The purpose of the amendments in §89.207(3)(I)(iii) and (7) is to enable the agency to verify that a property tax lender

has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender." Certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to maintain records of their business relationships with affiliated businesses, as well as records of all amounts paid to affiliated businesses, the amended provisions ensure that property tax lenders can substantiate their relationship with affiliated businesses and the fact that costs are not paid to employees of the property tax lender.

Additionally, please refer to the discussion following §89.601(c)(5) regarding documentation related to attorney's fees to address title defects.

In §89.207(3)(L)(i), concerning notices sent by attorneys involving judicial foreclosures under Texas Tax Code, §32.06, the changes provide language that better tracks the statute. For this adoption, the phrase "a non-salaried attorney of the licensee" has been replaced by the phrase "an attorney who is not an employee of the licensee."

Throughout §89.207, minor technical changes have been made to accommodate the new and revised provisions, including the renumbering of the last two paragraphs. In addition, the agency's acronym "OCCC," as defined in §89.102(8) (as renumbered), replaces the use of "Office of Consumer Credit Commissioner" and "commissioner" in §89.207(9) (as renumbered). The first instance is simply for abbreviation purposes.

In the second instance, the agency believes that the use of "OCCC" will provide better clarity as the context calls for action by the agency, as opposed to the commissioner specifically.

In §89.504, concerning Requirements for Disclosure Statement to Property Owner, the adoption adds subsection (f) relating to the disclosure of affiliated businesses. New subsection (f) requires property tax lenders that impose post-closing costs paid to affiliated businesses to include additional information in the disclosure form that the property tax lender must provide to the borrower before closing. In particular, the subsection requires the disclosure to include the name of the affiliated business, a statement that it is affiliated with the property tax lender, and a statement that costs paid to the affiliated business cannot be for services performed by employees of the property tax lender. The purpose of this amendment is to provide the borrower with additional information regarding the property tax lender's use of affiliated businesses, and to ensure that a property tax lender has complied with Texas Finance Code, §351.0021(d), which provides that certain post-closing costs "must be for services performed by a person that is not an employee of the property tax lender."

One commenter stated: "The idea that the disclosure of affiliated business arrangements is sufficient to avoid abuses is illogical. The disclosures would mean practically nothing to property owners. Without a scheme for enforcing prohibitions for affiliate businesses charging unreasonable fees and costs to circumvent fee and cost regulations, it is difficult to understand what purpose these proposed regulations will serve."

The commission disagrees with this comment. As discussed earlier, certain property tax lenders impose post-closing costs that are paid to companies affiliated with the property tax lender through common management, ownership, or control. By requiring property tax lenders to disclose the identities of affiliated businesses, the amended provision ensures transparency and enables the borrower to make an informed decision before closing. Thus, the commission maintains new §89.504(f) for this adoption.

II. Closing cost limitation

The majority of the amendments are contained in §89.601, concerning Fees for Closing Costs.

A. Repeal of closing cost tiers

During the early stages of rule development, most stakeholders agreed that the rule's former five-tier system based on the total tax lien payment amount did not correlate to the costs incurred by a property tax lender to obtain a transfer of a residential property tax lien. Thus, all the language relating to the five tiers has been deleted from §89.601. Specifically, the deletions are as follows: the introductory sentence in subsection (c), the last sentence of subsection (c)(2), and subparagraphs (A) - (E) of subsection (c)(2).

One commenter argued that the tiered system should be maintained, stating that "a complete flattening of the closing cap tiers is ill advised. While it may be true that some expenses of origination are constant regardless of the size of the transaction, this is not true of all expenses. For example, it would be imprudent to apply the same level of scrutiny when considering a loan of

\$5,000 versus a loan of \$50,000. A prudent originator would certainly pay for a more definitive title report. They would examine more closely the property value. Additionally, they would use more scrutiny in examining the borrowers' ability to pay." The agency is unaware of increased costs for a "more definitive title report" on a larger loan, because the cost of an abstract of title generally does not vary with the loan amount. The commission believes that the commenter's concerns are addressed by the provisions in §89.601(c)(4) and (5), which authorize additional amounts for multiple parcels of residential property and documents necessary to address title defects, as discussed later in this adoption. These provisions should enable property tax lenders to recover their costs in more complex transactions.

B. General maximum fee limit

In place of the five tiers, this adoption adds paragraphs (3) - (5) to subsection (c), which provide a \$900 general maximum fee limit, as well as two areas of exception to that general maximum fee limit for loans involving multiple parcels and costs for preparing documents to address title defects. The commission believes that the \$900 limitation will help ensure that lenders' closing-related costs are accurately reflected in the amounts that they charge, ensuring that prices are transparent and result in informed credit decisions.

Data collected in annual reports from property tax lenders indicates a downward trend in closing costs for residential property tax loans between 2008 and 2013. In particular, a 2012 study by the commission indicated a decrease in average residential closing costs from \$1,259 in 2008 to \$866 in 2011. Finance Commission of Texas,

Legislative Report: Property Tax Lending Study at 21 fig. 3 (2012). The average closing costs for residential property tax loans in 2013 was \$707. Furthermore, many property tax lender stakeholders provided oral and written information stating that they charge well below the former maximums in the rule and even the new re-proposed maximum limit.

One commenter "urge[d] the Commission to consider a \$500 general maximum closing cost cap." The commenter stated: "Although \$900 is much better than the caps provided by the current system, it far exceeds an amount necessary to recover costs directly associated with closing most transactions. [The commenter's] average third party costs on a single property transfer are below \$300, and we believe that most or all tax lien transferees can comply with a \$500 cap with relative ease. The closing cost cap is intended to reflect costs associated with each transaction, and should not serve as a method of recovering overhead or creating a profit center for tax lien transferees."

The commission agrees that the closing cost limitation should reflect costs directly related to closing. As stated in §89.601(b)(1), "the term 'closing costs' includes costs incurred by a property tax lender from the time of application through the time of closing." Closing costs should not include overhead or serve as a profit center. However, based on available information, the commission believes that a \$500 maximum would be too low. The agency received several informal comments prior to the proposal indicating that an \$800 cap would be too low. In addition, property tax lenders charged an average of \$707 in closing costs during 2013. It is important to note that \$707 is an average amount,

whereas the \$900 cap in §89.601(c)(3) is a maximum amount. An average by definition reflects numbers both below *and above* that number. Consequently, new §89.601(c)(3), which sets the general maximum fee limit for closing costs at \$900, is maintained for this adoption.

Five commenters argued that the \$900 limit is too low and would not cover the costs of certain property tax lenders. Two of these commenters provided itemizations of their costs per loan. One commenter stated that the lenders in its network make \$100.73 net profit per loan, charging an average of \$1,099.49 in closing fees. This commenter stated that the lenders' average costs of goods sold are \$393.55 (which includes an attorney fee, closing fee, courier and delivery, flood, inspection, recording, and title), and that their average expenses are \$1,470.50 (which includes salaries and benefits, commissions, marketing, facilities, postage, office supplies, and other general and administrative expenses). The other commenter stated that its costs per loan are \$1,408, consisting of \$325 for advertising; \$253 for title, legal, and mobile notaries; \$680 for payroll and benefits; and \$150 for office expenses.

It appears that these two commenters are including advertising and overhead expenses in their closing costs, even though advertising and overhead expenses are outside the intended scope of the closing cost limitation. As stated in §89.601(b)(1), "the term 'closing costs' includes costs incurred by a property tax lender from the time of application through the time of closing." Advertising costs are incurred long before a prospective borrower applies for a loan, so they do not directly relate to closing. Similarly, overhead expenses (including general and administrative

expenses) are incurred continuously and have no direct relationship to closing. These expenses should not be included in closing costs. Rather, interest charges are the proper avenue to compensate the lender for general overhead expenses. *See Stedman v. Georgetown Sav. & Loan Ass'n*, 595 S.W.2d 486, 494 (Tex. 1979) ("Interest is charged to compensate the lender for the risk of making the loan and for the lender's overhead costs.") When advertising and overhead expenses are removed from these commenters' closing costs, it appears that the costs fall within the \$900 maximum. In addition, the new provisions in §89.601(c)(4) and (5) authorize additional amounts for multiple parcels of residential property and documents necessary to address title defects, enabling these commenters to recover their costs in more complex transactions.

Two commenters argued that a reduction in maximum closing costs is unnecessary because competition is already causing a decline in average closing costs. One commenter stated that "market forces are already operating to lower closing costs on residential property tax loans. We believe market forces will do a better job regulating closing costs than regulatory amendments." Similarly, another commenter stated that "the marketplace has achieved your objective without adding new regulations regarding closing fees."

The commission disagrees with the contention that the decrease in average closing costs makes the rule amendments unnecessary. On the contrary, as discussed earlier, the comments indicated that some property tax lenders are currently including non-closing-related amounts (such as advertising and overhead) in the closing costs that they charge to borrowers.

Reducing the closing cost limitation to \$900 will help ensure that lenders' closing-related costs are accurately reflected in the amounts that they charge. This will make lenders' prices more transparent and help ensure that borrowers can make informed credit decisions, leading to a more competitive marketplace.

The commission believes that the \$900 cap provides an appropriate balance between consumer protection and industry cost recovery, and represents a reasonable amount of closing costs. Therefore, the commission declines to revise §89.601(c)(3) and maintains the \$900 general maximum fee limit for this adoption. Property tax lenders are welcome to charge below the general maximum fee cap to continue to foster a competitive marketplace.

C. Additional fees for multiple parcels of real property and documents to address title defects

For property tax loans including the payment of taxes for more than one parcel of real property, new §89.601(c)(4) states that a property tax lender may charge up to \$100 for each additional parcel, in addition to the general maximum fee limit in paragraph (3).

One commenter requested clarification that the additional \$100 per parcel applies to residential property, stating: "We request clarification that the additional \$100.00 for each additional parcel be clarified to only apply to the aforementioned Category A and Category E Property Classification, as published by the Texas Comptroller." The commission agrees with this suggestion and has added text specifying that the \$100 amount is authorized for each additional piece of residential property described by §89.601(a), which states: "The fee

limitations contained in this section are applicable to property tax loans secured by property designated as 'Category A (Real Property: Single-Family Residential),' and homesteads designated as 'Category E (Real Property: Farm and Ranch Improvements)' by the Property Classification Guide published by the Texas Comptroller of Public Accounts."

A new provision is also contained in §89.601(c)(5) regarding additional costs for preparing documents necessary to address a defect in title to real property. The provision allows a property tax lender to charge a reasonable fee for costs directly incurred in preparing, executing, and recording documents necessary to address a title defect, in addition to the general maximum fee limit described in paragraph (3). The fee for these documents is limited to recording costs and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. The purpose of this provision is to ensure that property tax lenders can be compensated for costs incurred to address title defects. Several precommenters identified situations where title defects require different types of documents to be prepared, executed, and recorded, such as deeds and affidavits of heirship. The fee is limited to recording costs and attorney's fees in order to ensure that property tax lenders do not violate Texas Government Code, §83.001(a), which generally prohibits a person other than an attorney from "charg[ing] or receiv[ing], either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien."

One commenter suggested that §89.601(c)(5) be amended to include costs charged by private entities designated for electronic recording. Regarding the proposed language, the commenter stated: "We believe this language prohibits recovery of legitimate third party recording fees incurred when e-recording documents with a county clerk's office. Since this language could potentially exclude certain charges legitimately associated with the recording process, we object to this section and request amendment to include e-recording fees paid to a licensed e-recording provider." The commission agrees with this suggestion and has added text to §89.601(c)(5) specifying that the additional amount charged by the property tax lender may include recording costs paid to "a private entity designated by a governmental entity for electronic recording."

One commenter objected to a provision in the re-proposed version of §89.601(c)(5) stating that in order for the property tax lender to include additional amounts for attorney's fees, the attorney must provide a signed statement to the borrower. The commenter stated: "The Agency may require a licensee to produce invoices or other documentation to ensure that allowable charges for attorney review are in fact legitimate or paid. There is no authorization, however, to dictate what an attorney representing a licensee must provide to a non-client. Further, many property owners may be confused and think they have an attorney representing their interests in the transaction." To address this comment, the commission has amended §89.601(c)(5) to remove the word "signed" and specify that the property tax lender, rather than the attorney, must provide the statement to the property owner describing the nature of the title defect and the work performed by the

attorney. A conforming change has been made to §89.207(3)(A)(ix).

Additionally, as a result of new §89.601(c)(3) - (5), the remaining paragraph has been renumbered and includes corresponding technical corrections.

III. Discount points

New §89.601(d) addresses the charging of legitimate discount points in connection with a property tax loan. Subsection (d) states that legitimate discount points are not subject to the general maximum fee. Paragraph (1) explains that in order for discount points to be legitimate, they must truly correspond to a reduced interest rate, they cannot be necessary to originate the loan, and the borrower must be provided with a written proposal that includes a contract rate without discount points and a lower contract rate based on discount points. The purpose of the provision is to describe the circumstances in which discount points are subject to the 18% maximum effective interest rate described in Texas Tax Code, §32.06(e), as opposed to the maximum closing cost limitation described in §89.601(c). This provision is intended to ensure transparency in connection with discount points and to enable the borrower to make an informed decision before closing.

New §89.601(d)(2) states that any discount point or other origination fee that does not meet the definition in paragraph (1) will be subject to the general maximum fee limit, and that property tax lenders may not use the term "discount point" to describe a fee other than a legitimate discount point. New §89.601(d)(3) specifies that legitimate discount points must be included in the calculation of the effective rate and upon

prepayment in full, must be spread as per Texas Finance Code, §302.101.

Amended §89.802, concerning Payoff Statements, adds subparagraph (C) to paragraph (9) concerning the itemization of the total payoff amount. The amendments to §89.802 further clarify that any refunds resulting from unearned legitimate discount points must be itemized on the payoff statement.

All eighteen commenters discussed the proposed provisions on legitimate discount points. The following paragraphs discuss these comments.

A. Commission's authority to adopt rules on discount points

Two commenters argued that the commission does not have authority to adopt rules on discount points. The commission disagrees with these comments. Rules governing discount points are within the commission's rulemaking authority under two different sections. First, the rules are authorized under Texas Finance Code, §351.007, which provides: "The finance commission may adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code." Second, the rules are authorized under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to "adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section."

The commenters made three arguments to support the conclusion that the commission does not have authority to adopt rules regulating discount points.

First, one of the commenters argued that Texas Finance Code, §351.007 does not

authorize the commission to adopt rules relating to interest. The commenter stated: "§351.007 gives the Finance Commission a broad mandate to 'adopt rules to ensure compliance with this chapter'. However, this language only provides the Finance Commission authority to adopt rules to implement the statutes in embodied in Chapter 351 of the Tex. Finance Code. There is nothing in Chapter 351 of the Finance Code that addresses interest rates and § 351.007 does not give the Finance Commission the authority to regulate interest."

The commission disagrees with this comment. The commenter failed to quote the last seven words of §351.007, which authorize the commission to adopt rules to ensure compliance with Texas Tax Code, §32.06. In particular, the commission may adopt rules to ensure compliance with §32.06(e), which includes the 18% interest limitation and the reasonable-closing-costs requirement. The provisions in §89.601(d) help ensure that a lender's use of discount points does not violate the 18% interest limitation. They also help ensure that discount points are not used as a disguised closing cost in violation of the reasonable-closing-costs requirement.

Second, both commenters argued that the rulemaking authority in Texas Tax Code, §32.06(a-4)(2) is limited to closing costs and other non-interest charges. One commenter stated: "'Interest' isn't a fee or closing cost, even if it is added at the beginning of a transaction rather than spread over time. As such, the proposed rules on discount points can't get their authority under [§32.06(a-4)(2)], relating to the reasonableness of a closing cost, fee or charge." The other commenter stated: "Since the legislative rule making authority granted to the Finance

Commission only authorizes the Finance Commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges, the Finance Commission does not have the authority to regulate interest rates."

The commission also disagrees with these comments. Interest is a charge authorized under §32.06(e), so it falls within the "other charges permitted under this section" described in §32.06(a-4)(2). The commenters' argument appears to be based on the premise that interest is not a charge, but this premise is incorrect. Texas courts have routinely referred to interest as a charge. *See, e.g., Danziger v. San Jacinto Sav. Ass'n*, 732 S.W.2d 300, 304 (Tex. 1987) ("A usurious *charge* may be contained in an invoice, a letter, a ledger sheet or other book or document. . . . A pay-off quote which reflects a *charge* of interest in excess of that allowed by law constitutes '*charging*' of usurious interest.") (emphasis added). Because interest is a charge authorized under §32.06(e), the commission is authorized to adopt rules relating to interest under §32.06(a-4)(2).

Third, both commenters argued that a rule governing discount points would be inconsistent with the 18% interest limitation in §32.06(e). One commenter stated: "The Legislature capped the interest rate on tax loans covered by Tex. Tax Code §32.06 at 18%. Accordingly, so long as a lender follows the appropriate rules for calculating interest already provided by the Legislature regarding interest calculations, the OCCC and Finance Commission are only authorized to enforce the existing statutes regarding property tax loan interest rates and does not have the independent authority to implement rules regulating interest rates." Similarly, the other commenter stated: "A

prohibition is inconsistent because §32.06(e) is unambiguous: the interest rate cap is 18% per year. If the aggregate interest rate calculation falls below 18%, compliance is achieved."

The commission disagrees with the suggestion that the rule is inconsistent with the 18% interest limitation. The provisions in §89.601(d) do not substitute a different maximum interest rate for the 18% maximum in §32.06(e). Rather, the provisions help ensure that a lender's use of discount points does not violate the statute's 18% interest limitation, based on well-settled principles of case law outlined in the preceding discussion. They also help ensure that discount points are not mischaracterized as closing costs.

B. Lenders' authority to charge discount points

Eight commenters argued that discount points should be prohibited for property tax loans.

The commission believes that prohibiting discount points altogether would be inconsistent with Texas Tax Code, §32.06(e). Texas courts have generally held discount points to be a form of prepaid interest. *See, e.g., Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 596 (Tex. 2013) (holding that legitimate discount points are interest and are not subject to the Texas Constitution's 3% cap on fees necessary to originate a home equity loan); *Tarver v. Sebring Capital Credit Corp.*, 69 S.W.3d 708, 713 (Tex. App.--Waco 2002, no pet.) (holding the same). Like other forms of prepaid interest, discount points must be spread over the term of the loan in order to determine whether the loan is usurious. *See* Tex. Fin. Code §302.101; *Tanner Dev. Co.*

v. Ferguson, 561 S.W.2d 777, 786-87 (Tex. 1977). However, in order to be legitimate, discount points must be an option available to the borrower, rather than a fee necessary to originate the loan. *See Norwood*, 418 S.W.3d at 596 (explaining that "true discount points are not fees 'necessary to originate, evaluate, maintain, record, insure, or service' but are an option available to the borrower"). Under this case law, legitimate discount points are a form of prepaid interest subject to the 18% maximum effective interest rate described in Texas Tax Code, §32.06(e).

The commenters' primary argument for prohibiting discount points focuses on differences between property tax loans and standard mortgages. The commenters point out that discount points have traditionally been authorized for standard mortgages. Because of the differences between property tax loans and standard mortgages, they argue that discount points should be prohibited for property tax loans. For example, two commenters stated: "I believe discount points should be prohibited from Transfer of Tax liens because they are confusing and are a mortgage like product." One commenter included a table with a list of differences: for standard mortgages, the lien is created voluntarily, priority is based on time of recording, nonjudicial foreclosure is allowed, there is a larger average loan amount and number of loans made, credit ratings of borrowers are higher, there is more sophistication in the market, there is more statistical information available, and there are standard rates.

Along the same lines, several commenters pointed out that Texas Tax Code, §32.06 does not expressly authorize discount points. One commenter stated: "Texas mortgage law deals with the reality

of discount points that are offered nationwide for mortgages, but our law does not address whether all Texas businesses have a right to offer discount points for any type of loan--mortgages or otherwise. The statutory scheme governing transferred property tax liens does not authorize the charging of discount points, and there is no reason why the OCCC should create the additional charge that is inappropriate and for which compliance is unclear and unenforceable." Another stated: "Because Section 32.06 does not contemplate the imposition of discount points, [the commenter] would urge that the proposed rules be amended to prohibit the imposition of discount points."

It may be true that property tax loans differ from standard mortgages, but the commission is unaware of any case law that limits discount points to standard mortgages. Texas courts have recognized mortgage lenders' ability to charge discount points in a manner consistent with Texas usury statutes, even though the usury statutes do not expressly authorize discount points. Therefore, the legislature's silence on discount points for property tax loans does not necessarily suggest that they are prohibited. Charging legitimate discount points is simply one method for undertaking what Texas Tax Code, §32.06(e) expressly authorizes lenders to do: charge an 18% effective annual interest rate.

Some commenters argued that discount points should be prohibited for property tax loans because they are confusing, and borrowers are unfamiliar with discount points in this context. As discussed earlier, two commenters stated: "I believe discount points should be prohibited from Transfer of Tax liens because they are confusing and are a mortgage like product." Another

commenter stated: "Approximately half of our customers do not have a mortgage and therefore have probably not been exposed to the concept of discount points."

The commission believes that this concern has been addressed by the written proposal required by new §89.601(d)(1)(C). This proposal, which must be provided to the borrower before closing, will describe the nature of the discount points, specifying the benefit that the borrower is getting from the discount points.

Some commenters expressed concern that certain property tax lenders would not comply with requirements for discount points, or that certain lenders would use discount points as a disguised method of collecting closing costs. One commenter stated: "Successfully servicing a property tax loan that incorporates discount points is very difficult. Interest may not be charged on the prepaid interest component, refunds of the unamortized portions of the prepaid interest have to be calculated and refunded, and APR calculations have to correctly incorporate the prepaid interest. It is our observation that the property tax lenders that currently offer discount points do not consistently follow these requirements due to their complexity. I am concerned they may evolve and continue their business model of pushing discount points, and subsequently not properly service the loan. The result will be additional consumer complaints" Another commenter expressed concern "that a handful of licensees are attempting to disguise a portion of their closing costs as discount points. . . . [C]ertain licensees originate transfers but immediately sell them to an unrelated funding company, keeping the closing costs and 'discount points' as their sole compensation for each transaction. What

this practice has created is a system whereby these originators have incentive to charge high discount points, although the rate charged by the licensee actually funding the loan does not decrease proportionally."

These comments raise several of the issues that §89.601(d) is intended to address. Discount points should be a method for providing borrowers with an option to obtain a lower interest rate. They should not be a method of maximizing profits or charging disguised closing costs. Some comments suggested that certain property tax lenders currently rely on discount points as a primary source of funding. For example, one commenter stated: "Without our own funding capabilities, we rely on the origination fees and discount points to be able to meet our financial obligations in running our business." If these property tax lenders are currently charging discount points that do not actually correspond to a reduced interest rate, or that are not voluntary, then these lenders will be required to change their pricing practices in order to comply with §89.601(d). The agency will monitor property tax lenders' use of discount points to ensure that they comply with these requirements.

One commenter argued that the proposed rule does not describe true discount points because "[a]n essential element of mortgage discount points is that they are not refundable." The commission disagrees with this comment. Discount points must be refundable in order to ensure that they comply with the 18% interest limitation in Texas Tax Code, §32.06(e). Discount points are nonrefundable for certain mortgage loans that are exempt from state usury laws under the Depository Institutions Deregulation and Monetary Control Act (DIDMCA). However, for other

mortgage loans, such as secondary mortgage loans subject to Chapter 342 of the Texas Finance Code, discount points must be refundable in order to ensure that the lender complies with Texas Finance Code, §302.101. Nonrefundability is not an essential feature of discount points.

C. Including discount points in principal balance

As re-proposed, §89.601(d)(4) and (5) prohibited property tax lenders from including discount points in the principal balance of a property tax loan, and required any discount points to be paid by the borrower before closing. In response to comments, the commission has removed these provisions for this adoption. However, the commission and the agency remain seriously concerned about the practice of including discount points in the principal balance of a property tax loan, for the reasons outlined in the following paragraphs.

Ten commenters supported the re-proposed rule's prohibition on including discount points in the principal balance of a property tax loan. For example, one commenter stated: "ensuring that prepaid interest is kept separate from interest bearing principal to avoid charging property owners interest on the prepaid interest." Another commenter recommended that discount points should be prohibited altogether, but stated that "if the OCCC determines they must allow discount points, we would then support the pre-paid interest charges being paid by the property owner before or at closing."

However, five commenters objected to the prohibition on including discount points in the principal balance. One commenter

stated: "Overwhelmingly, the property owner who is seeking a tax lien loan is cash strapped. . . . Requiring discount points to be paid in cash takes yet one more option away from borrowers who have precious few options in the first place." In addition, two commenters provided example transaction comparisons, showing that financed discount points can result in savings for borrowers, assuming that closing costs remain constant, the note rate is decreased by approximately 3%, and each discount point is approximately \$350 for a \$12,000 loan.

Furthermore, one commenter who supported prohibiting discount points stated that the rule would substantially reduce the number of transactions with discount points, stating: "We have always offered the ability for customers to pay some or all of the closing costs up front, and they never elect to use this option. This experience leads me to confidently predict that less than 1 out of 1,000 tax lien transfer transactions will have a borrower elect to pay upfront for the discount points."

One commenter stated: "[W]e further object to the requirement in the proposed 7 TAC 89.601(d)(4) requiring that any discount point be paid by cash, check, or electronic fund transfer before or at closing of a property tax loan. . . . We believe this rule serves no purpose and, pursuant to Tex. Gov't Code § 2001.031, we hereby request a concise statement to the principal reasons for and against its adoption." Because the commission is not adopting §89.601(d)(4), the commission declines to provide this concise statement.

The commission is deeply concerned about the practice of including discount points in the principal balance for several

reasons. First, discount points are not covered by the definition of "funds advanced" in Texas Tax Code, §32.06(e), which provides: "Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." Second, if property tax lenders charge interest on the discount points, this could lead to a usury violation for charging interest on interest. *See William C. Dear & Assocs., Inc. v. Plastronics, Inc.*, 913 S.W.2d 251, 254 (Tex. App.--Amarillo 1996, writ denied) (interpreting a usury statute to prohibit compounding of interest where it was not expressly authorized). Third, this practice exaggerates the apparent savings that the borrower is receiving in exchange for paying for the discount points. It may appear to the borrower that there will be a substantial savings through an interest rate reduction, but this savings is partially offset by the extra principal that the borrower will have to repay over the life of the loan.

In light of the potentially serious impact on small businesses (discussed in greater detail in the "Impact on small businesses" section), the commission has removed the prohibition on financing discount points that was in §89.601(d)(4) and (5) of the re-proposed rules. The agency intends to monitor this practice further before recommending that the commission adopt a rule prohibiting financed discount points. Legislative changes may address the issue, and the commission may propose rules on this practice in the future. The agency and commission believe that the rule as adopted will make significant strides in ensuring the legitimate use of discount points.

D. Discount point calculation requirements

Two commenters suggested additional calculation requirements for discount points. One commenter suggested that the rule require a "mathematical formula for precisely determining the 'standard rate' off which the discount can be taken." One commenter stated that the rule should require that borrowers "receive fair and bona rate reductions from market rates. If lenders begin rate reductions from the allowable maximum, then consumers are being deceived. . . . A single discount point must have a minimum value of 25 basis points."

The commission believes that the proposed requirements for legitimate discount points in subsection (d) are sufficient to provide guidance on which discount points will be considered legitimate. The agency will monitor the industry's use of discount points to determine whether more detailed calculation requirements should be proposed in the future. Thus, the commission declines to add further discount point calculation requirements for this adoption.

Two commenters suggested that if discount points are authorized, the rule should cap the maximum amount of discount points. One of these commenters stated: "Discount points in the mortgage industry, for example, do not typically exceed 200 basis points." Discount points are subject to the 18% limitation on interest described in Texas Tax Code, §32.06(e). The commission believes that providing a discount-point maximum in addition to the 18% limitation would be inconsistent with §32.06(e). Hence, the commission declines this suggestion.

Two commenters suggested that the rule should require the originator to remit any discount points to a subsequent lienholder. One of these commenters stated: "Proceeds from discount points must be held by the ultimate lienholder, because a refund will have to be issued if the loan is satisfied early." The other commenter stated: "Mortgage discount points are never paid to mortgage bankers or brokers. . . . Likewise, if tax transfer originators keep so-called 'discount points' when originating for others, these fees are clearly not legitimate discount points." The commission believes that this requirement would be outside the scope of §32.06(e), which does not address circumstances under which prepaid interest must be retained by an originating lender. Accordingly, the commission declines to incorporate this suggestion into the adoption.

One commenter suggested that all discount points should be subject to the \$900 fee cap. The commenter stated: "It defeats the purpose of the fee cap if it can be easily exceeded through discount points." For the reasons discussed earlier, legitimate discount points are prepaid interest, and are therefore subject to the 18% interest limitation described in Texas Tax Code, §32.06(e), rather than the limitation on closing costs. However, the commission agrees that discount points should not serve as disguised closing costs. The new language in §89.601(c)(2) partially addresses this commenter's concern by specifying that lenders may not use the term "discount point" to describe any charge other than a legitimate discount point, and that any non-legitimate discount points are subject to the closing cost limitation.

One commenter suggested that the rule prohibit the use of discount points in

situations where they are not legitimate. The commission believes that this commenter's concern is addressed by §89.601(c)(2), which prohibits lenders from using the term "discount point" to describe any charge other than a legitimate discount point.

One commenter suggested that "[a]s with mortgage discount points, the rate benefit to the property owner must 'break even' long before the maturity." The commission believes that this commenter's concern is addressed by the new language in §89.601(d)(3), which requires the lender to refund discount points upon prepayment in full. The break-even point is a larger concern for first-lien mortgage loans where discount points are nonrefundable, as discussed previously. If borrowers prepay their loans before they "break even" on the discount points, then they should receive a refund of a portion of the discount points.

E. Discount point disclosures

Three commenters suggested that the rule provide additional disclosures to property owners on discount points. One of these commenters suggested that lenders be required to provide the following disclosure: "Discount points are optional charges for your property tax loan. Other property tax lenders may offer similar rates without charging you fees for discount points. You should inquire discount point policies from other licensed property tax lenders. Contact the Office of Consumer Credit Commissioner's Office should you have any questions, 800-538-1579." A second commenter stated that because discount points are refundable prepaid interest, the commission should "require that any discount points be itemized on monthly statements and payoff statements and to clarify that interest cannot be charged on the

amount of the discount points." The same commenter also stated: "The OCCC must require lenders provide borrower(s) with the appropriate tax forms, at signing, to properly notify IRS and borrower(s) of total pre-paid interest charges to be deducted from respective tax return filings." A third commenter suggested "requiring discount points to be reflected on payoff statements in a manner that makes clear to the property owner any money that would be due to them if he or she satisfies the agreement early."

In response to comments received on the original proposal of these rules, §89.601(d)(1)(C)(vi) specifies that the written proposal provided to the property owner must specify that discount points are voluntary and not required to be paid in order to obtain the loan. The commission believes that with this addition, subsection (d)(1)(C) provides property owners with appropriate guidance about their options for discount points. The agency will continue to monitor this issue and may consider drafting a model form for future use. The commission believes that the amendment to §89.802(c)(9)(C) appropriately addresses the issue of disclosing refunds of discount points on payoff statements. Regarding disclosures related to IRS filings and disclosures on monthly statements, the commission believes that these disclosures would be outside the scope of Texas Tax Code, §32.06.

One commenter stated: "[W]e believe it is unnecessarily over-regulating to dictate such a detailed new disclosure when discount points are clearly shown on a HUD statements and when the practice of discount points is so common in real estate transactions. That said, our originators never shy from explaining *every* aspect of the tax lien transaction to their borrowers and we

would not object to (yet another) disclosure educating borrowers about discount points."

The commission disagrees with the suggestion that the disclosures described in §89.601(d)(1)(C) are unnecessary. Not all property tax lenders use a HUD-1 settlement statement, and even if they do, the HUD-1 statement does not describe the options that must be provided to the borrower in connection with legitimate discount points. The commission believes that the disclosures described in §89.601(d)(1)(C) are important to ensure transparent pricing practices and enable borrowers to make informed credit decisions.

In addition, regarding the affiliated business disclosure statement required by §89.504(f) and the itemization of unearned legitimate discount points in §89.802(9)(C), the agency believes that these revisions are appropriately contained in the rule text as opposed to the corresponding forms in each rule. Only certain property tax lenders use affiliated businesses or offer discount points. Thus, to avoid potential confusion, the changes focus these voluntary practices in the rule text, without placing optional language in the forms used by the entire industry.

IV. Impact on small businesses

The adopted rules may have an economic impact on some small and micro-businesses. Many small property tax lenders will be unaffected by the adopted rules, because they already charge closing costs below the adopted \$900 limitation, do not use affiliated business arrangements, and do not charge discount points. However, the comments indicated that a segment of small property tax lenders relies exclusively on closing costs and discount points to

compensate the lenders for all origination costs. These lenders will likely have to adjust their pricing practices in order to comply with the rule and with Texas Tax Code, §32.06(e). The primary impact will be on lenders whose closing costs currently include costs that are unrelated to closing (such as advertising and overhead), as well as lenders that charge discount points that are not legitimate under the adopted rule. Ultimately, however, the commission estimates that the impact on these lenders will be minimal, because they should be able to recoup these costs through other methods, such as charging a base par interest rate and ensuring that they are able to retain a portion of that interest rate.

In its original proposal of these rules in October 2014, the commission solicited comments on the effects that the rules would have on small businesses. Five commenters argued that as re-proposed, the rules would disproportionately affect small businesses. One commenter stated: "As a small originator in an extremely competitive market, it is necessary for [the commenter], and many other small originators, to utilize investment capital from larger firms to offer flexible property tax loans to homeowners so they will not lose their homes. Without our own funding capabilities, we rely on the origination fees and discount points to be able to meet our financial obligations in running our businesses." Another commenter stated: "As a small business that depends on origination profits we are unable to originate loans at a loss unlike large players in the marketplace . . . which in some cases are publicly held companies that are happy to originate loans at a loss and then make up for it in profits from the interest rate spread they enjoy from those assets." Another commenter stated: "Evidence shows that competition has

lowered the average closing costs to a level that is below the true cost of origination. It is one thing for a business to *choose* to take a loss on origination (at least for a time) for a competitive advantage. It is quite another to *force* all originators to operate at a loss in originations. To do so will drive most originators out of business who do not meet a certain business profile, i.e. large, established originators with access to institutional or extremely cheap financing who originate and own their own loans. Such an originator is able to capitalize their losses in their origination arm and make it up in the interest rate spread over the life of the loan. A small originator without access to cheap investment capital or who sells their loans must make a profit at origination or they will be forced to close their doors."

These commenters have stated that they rely on closing costs and discount points to compensate them for the costs of origination. But closing costs and discount points are not intended to cover *all* costs of origination. Closing costs are intended to cover costs that arise between the loan application and closing, and discount points should be an optional offset that enables a borrower to obtain a lower interest rate than the standard par rate offered by the lender. Therefore, in order to comply with the rule as adopted, these lenders may have to adjust their pricing practices. These lenders may have to recoup their origination costs by charging a higher interest rate and ensuring that they are able to retain a portion of that higher interest rate. It appears that there is room for them to do so; two of the commenters stated that they charge fixed interest rates between 9.90% and 10%, well below the 18% maximum. After making this adjustment, these small lenders will still be able to recover their costs and effectively receive the same stream of payments, but the

amounts they charge for closing costs will more accurately reflect costs actually related to closing. The commission disagrees with the contention that the rule will force lenders to operate at a loss.

Some commenters emphasized that the combination of a \$900 closing cost cap and a prohibition on financing discount points would put certain small property tax lenders out of business. For example, one commenter stated: "Lowering origination fees to \$900 and in effect eliminating discount points would put us out of business." Another commenter stated that "to further reduce origination fees beyond the current well thought out guidelines and to, in effect, eliminate discount points, will create an injustice to the property owners by putting them more at risk in the long run with fewer options to assist them with their property taxes which will increase their cost and risk of losing their property." This concern is partly addressed by the removal of the prohibition on financing discount points (although the commission still has concerns about this practice, as discussed earlier). In addition, as discussed in the previous paragraph, small lenders should be able to adjust their pricing practices to ensure that they stay in business.

The commission believes that small-business-related exceptions to the rule would be legally infeasible. Creating a higher alternative closing cost cap for small businesses would be infeasible because it would mean that the cap would include costs that are not related to closing (such as advertising and overhead). In addition, exempting small businesses from requirements on legitimate discount points would fail to ensure that these small businesses comply with the 18% interest limitation in Texas Tax Code, §32.06(e).

The agency does not know exactly how many small and micro-businesses will be affected by the adopted rules, because it does not know how many small and micro-businesses engage in the practice described earlier (i.e., relying on closing costs and discount points to compensate the lender for all origination costs, and assigning the loan to another party). The agency estimates that five property tax loan companies engage in this practice. This estimate is based on the number of property tax lenders that filed an annual report in 2014 stating that they made loans but did not have any loan receivables. If these lenders are charging closing costs that exceed the limitations specified in adopted §89.601(c), or if they are not complying with the provisions on discount points in adopted §89.601(d), then they will have to amend their pricing practices in order to comply with the rule.

The precise amount of the rule's economic impact on small businesses is difficult to estimate, and depends partly on information that the agency does not have. For example, the agency does not know how many secondary-market participants will be willing to purchase loans from small originators on terms that comply with the adopted rule. Nonetheless, the commission believes that the impact on small businesses will be minimal. As outlined in the previous discussion, the property tax lenders that currently rely exclusively on closing costs and discount points should be able to recover their costs and effectively receive the same stream of payments by charging higher interest rates. So it is unclear why secondary-market participants would refuse to purchase the loans on terms that allow the lenders to recover substantially the same costs that they recover today.

While the adopted rules may have an impact on certain small property tax lenders, the commission believes that this impact will be minimal. For the reasons discussed earlier, small property tax lenders should be able to amend their pricing practices in a manner that enables them to comply with the rule and recoup their actual costs.

V. Conclusion

All of the amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.

The amendments related to affiliated businesses contained in §§89.102, 89.207, and 89.504 are adopted under Texas Finance Code, §351.0021(e), which authorizes the commission to adopt rules implementing and interpreting authorized charges that a property tax lender may impose after closing.

The Texas Tax Code also contains specific authority for the amendments to certain rules. In particular, the amendments to §89.504 are adopted under §32.06(a-4)(1) of the Tax Code, which authorizes the commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer. The amendments to §89.601 are adopted under §32.06(a-4)(2) of the Tax Code, which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges

permitted under §32.06. And the amendments to §89.802 are adopted under §32.06(a-4)(4) of the Tax Code, which authorizes the commission to prescribe the form and content of a request a lender with an existing recorded lien on the property must use to request a payoff statement and the transferee's response to the request.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351[~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220);~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliated business--A person that:

(A) _____ shares _____ common management with a property tax lender;

(B) _____ shares, _____ directly or indirectly, more than 10% common ownership with a property tax lender; or

(C) is controlled, directly or indirectly, by a property tax lender through a controlling interest greater than 10%.

(2) [(4)] Borrower--The borrower in a property tax loan is the property owner.

(3) [(2)] Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) [(3)] Date of consummation--The date of closing or execution of a loan contract.

(5) [(4)] Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351[~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~].

(6) [(5)] Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(7) [(6)] Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(8) [(7)] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(9) [(8)] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents, and an advancement of

money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) - (2) (No change.)

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic

record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) - (viii) (No change.)

(ix) receipts, invoices, or statements describing the nature of the title defect and the work performed by an attorney, along with proof of payment for recording costs or attorney's fees necessary to address a defect in title, as described by §89.601(c)(5) of this title (relating to Fees for Closing Costs), unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file;

(x) written documentation of any legitimate discount points offered to the borrower, as described by §89.601(d) of this title, including the written proposal described by §89.601(d)(1)(C);

(B) - (H) (No change.)

(I) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance

and the notice required by Texas Finance Code, §307.052; ~~and~~

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and (a)(5), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and [;]

(iii) records identifying all amounts paid to an affiliated business described by paragraph (7) of this section, including a designation that an amount was paid to an affiliated business and a statement of which affiliated business was paid, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file;

(J) - (K) (No change.)

(L) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c):

(I) (No change.)

(II) if sent by an [~~a non-salaried~~] attorney who is not an employee of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by an [~~a non-salaried~~] attorney who is not an employee of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property, including verification of delivery of the notice;

(IV) if sent by an [~~a non-salaried~~] attorney who is not an employee of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property;

(V) - (VIII) (No change.)

(M) (No change.)

(4) - (6) (No change.)

(7) Records of affiliated businesses. A property tax lender must maintain records describing its relationship with any affiliated business with which the property tax lender regularly contracts for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender. The records must include any agreements between the property tax lender and the affiliated business, as well as any filings with the Texas Secretary of State that show the relationship between the property tax lender and the affiliated business.

(8) [(7)] Disaster recovery plan. A property tax lender must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(9) [(8)] Retention and availability of records. All books and records required by this section must be available for inspection at any time by OCCC [~~Office of Consumer Credit Commissioner~~] staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this section must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the OCCC [~~commissioner~~] access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) - (e) (No change.)

(f) Disclosure of affiliated businesses. If a property tax lender regularly contracts with one or more affiliated businesses for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender, then the disclosure statement must include a

statement substantially similar to the following: "The property tax lender can impose certain additional charges after closing. Some of these charges may be paid to (INSERT NAME OF AFFILIATED BUSINESS OR BUSINESSES), which is affiliated with the property tax lender. The costs paid to the affiliated business cannot be for services performed by employees of the property tax lender."

§89.601. Fees for Closing Costs.

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

(c) Total maximum fees for closing costs. [~~For purposes of this section, the "total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien" will be referred to as the "total tax lien payment amount."~~]

(1) Maximum fees include funds received by third parties or retained by property tax lender. The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) Maximum fee limits for closing costs. A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the

~~amounts authorized by this section. [The following subparagraphs contained in this paragraph outline the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender in connection with a property tax loan, based on the total tax lien payment amount.]~~

~~[(A) For a total tax lien payment amount that is less than \$2,500, the maximum fee for closing costs is \$1,000.]~~

~~[(B) For a total tax lien payment amount that is equal to or greater than \$2,500 but less than \$5,000, the maximum fee for closing costs is \$1,250.]~~

~~[(C) For a total tax lien payment amount that is equal to or greater than \$5,000 but less than \$7,500, the maximum fee for closing costs is \$1,500.]~~

~~[(D) For a total tax lien payment amount that is equal to or greater than \$7,500 but less than \$10,000, the maximum fee for closing costs is \$1,750.]~~

~~[(E) For a total tax lien payment amount that is equal to or greater than \$10,000, the maximum fee for closing costs is \$2,000, or 10% of the total tax lien payment amount, whichever is greater.]~~

(3) General maximum fee limit.
The general maximum fee for closing costs is \$900.

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to \$100 for each additional parcel of residential property described by subsection (a), in addition to

the general maximum fee limit described in paragraph (3) of this subsection.

(5) Cost for preparing documents to address title defect. If one or more documents must be prepared in order to address a defect in title on the real property subject to the property tax loan, then the property tax lender may charge a reasonable fee for costs directly incurred in preparing, executing, and recording any necessary documents, in addition to the general maximum fee limit described in paragraph (3) of this subsection. The fee for preparing documents is limited to recording costs paid to a governmental entity (or a private entity designated by a governmental entity for electronic recording) and reasonable attorney's fees paid to a person who is not an employee of the property tax lender. In order for the fee for these documents to be authorized, any documents must comply with all applicable laws, including recording requirements. In particular, any affidavit of heirship must comply with the substantive and procedural requirements of Texas Estates Code, Chapter 203, and must be recorded in the deed records of a county as provided in Texas Estates Code, §203.001(a)(2). For attorney's fees, the property tax lender must provide a statement to the property owner describing the nature of the title defect and the work performed by the attorney. The fee for preparing documents is not authorized under this paragraph if the fee includes any of the following:

(A) recording costs that are not paid to a governmental entity or a private entity designated by a governmental entity for electronic recording;

(B) attorney's fees that are not reasonable;

(C) costs that are not necessary in order to address a defect in title on the real property; or

(D) costs that are not substantiated by receipts or invoices that are maintained under §89.207(3)(A)(ix) of this title (relating to Files and Records Required).

(6) [3] Reasonable closing costs. The maximum fees contained in paragraphs (3), (4), and (5) [paragraph (2)] of this subsection constitute "reasonable closing costs" under Texas Tax Code, §32.06.

(d) Discount points. Legitimate discount points are prepaid interest and are not subject to the general maximum fee limit described by subsection (c) of this section.

(1) Discount points are legitimate if:

(A) the discount points truly correspond to a reduced interest rate;

(B) the discount points are not necessary to originate the loan; and

(C) before closing, the property tax lender provides the property owner with a written proposal describing the options offered to the property owner, including all of the following:

(i) an offer of a property tax loan that includes a contract rate without discount points;

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points;

(iii) the difference between the contract rate without discount points and the lower contract rate, expressed as a percentage or as a number of points;

(iv) the cost of the discount points expressed as a dollar amount; and

(v) the percentage amount equal to the cost of the discount points divided by the principal balance of the loan; and

(vi) a statement that discount points are voluntary and not required to be paid in order to obtain the loan.

(2) If a property tax lender directly or indirectly charges, contracts for, or receives a discount point or other origination fee at closing that is not a legitimate discount point under paragraph (1) of this subsection, then the point or fee is subject to the maximum fee limit described by subsection (c) of this section. A property tax lender may not use the term "discount point" to describe a fee other than a legitimate discount point.

(3) To determine whether a property tax loan exceeds the 18% maximum effective rate of interest described in Texas Tax Code, §32.06(e), legitimate discount points must be included in the calculation of the effective rate. Upon prepayment in full, a property tax lender must spread legitimate discount points in accordance with Texas Finance Code, §302.101.

§89.802. Payoff Statements.

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

(c) Required elements. A payoff statement under this section must include:

(1) - (8) (No change.)

(9) an itemization of the total payoff amount, which must include:

(A) the unpaid principal balance on the property tax loan;

(B) the accrued interest as of the balance date; ~~and~~

(C) any refundable amount resulting from unearned legitimate discount points described by §89.601(d) of this title (relating to Fees for Closing Costs); and

(D) ~~(E)~~ any other fees that are part of the total amount due under the property tax loan, with a specific description for each fee;

(10) - (12) (No change.)

(d) - (k) (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 20, 2015.

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

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January 22, 2015

The Office of Consumer Credit Commissioner
Attention: Laurie Hobbs
2601 N. Lamar Blvd.
Austin, Texas 78705

Re: Comments on the Re-Proposed Amendments to 7 Texas Administrative Code §§
89.102, 89.207, 89.504, 89.601 and 89.802

Dear Sir or Madam:

I am an attorney in McAllen, Texas specializing in real estate, banking and corporate matters. I have represented institutional lenders, non-institutional lenders, commercial borrowers, consumer borrowers and tax lien lenders.

I am writing to you today regarding the Office of Consumer Credit Commissioner's re-proposed amendments to 7 Texas Administrative Code §§ 89.102, 89.207, 89.504, 89.601 and 89.802. Specifically, I wanted to offer comments on the amendments to § 89.601 as they relate to the use of discount points in tax loan transactions.

We are all aware of the basic principles of the use of discount points in mortgages and home equity transactions. The use of discount points in mortgages and home equity transactions is designed to assist borrowers in obtaining reduced interest rates. Discount points are often misunderstood, but the Texas courts have developed significant precedent governing their use and structure. The case law is clear that discount points are treated as pre-paid interest, paid at the time of closing and must be clearly defined as option rather than mandatory.

In regards to tax loan transactions, the case law is not as well developed but the underlying principals remain the same. In their essence, the tax loan rules and regulations have been created and instituted in order to balance the protections offered to property owners without unduly prohibiting a competitive market place for tax lien transfers. Tax loans are not mortgages in the traditional sense and are not treated as such. In this regard, clear rules need to be implemented in the tax loan context.

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For these reasons, I believe that the re-proposed amendments to 7 Texas Administrative Code §§ 89.102, 89.207, 89.504, 89.601 and 89.802 are important and will offer a true benefit to tax loan borrowers. I believe the re-proposed amendments are clear and are correct in their reasoning and analysis that discount points, if permitted at all, should not bear interest, should be paid separately at the closing of the tax loan and should not be included in the principal balance of the tax loan. Any other analysis, one that would allow the discount points to be included in the principal balance of the tax loan, would seem to be contrary to the established case law in the mortgage and home equity loan context, contrary to the stated purpose of tax loans in general and contrary to the long respected rule that you should not charge interest on interest.

Thank you for your time and attention.

Very truly yours,

ATLAS, HALL & RODRIGUEZ, LLP

By: 
Joseph M. Habbouche

JMH:ng



HARRISON DUNCAN PLLC

PROPERTY TAX MORTGAGE REAL ESTATE LAW

January 26, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs, Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

Re: Finance Commission of Texas re-proposed amendments to TAC Chapter 89 regarding Property Tax Lenders

Dear Commissioner Pettijohn,

Thank you for the opportunity to comment on the re-proposed amendments. Our firm represents several licensed tax lien transferees and also has experience with conventional mortgage lending. In general we believe the amended regulations will be beneficial to Texas property taxpayers, and we support their adoption. We offer comments on two issues addressed in the amended regulations that we believe should be further refined to serve Texas taxpayers.

Discount points are inappropriate for tax transfers.

Discount Points are a financial feature of long term residential mortgages, and tax lien transfers do not share the characteristics of these mortgages that would allow discount points. We believe that discount points should simply be forbidden for tax transfers because there is no reasonable means for them to be legitimate.

Tax lien transfers share few characteristics with mortgages.

The belief that tax lien transfers should be thought of as essentially similar to regular mortgages is mistaken. As financial vehicles they share no characteristics except for collateral type and the fact that both, like many types of financings, are generally repaid with monthly payments of principal and interest.

The similarities and dissimilarities between regular mortgages and tax lien transfers are shown in the following table.

Characteristic	For Mortgages	For Transferred Property Taxes
Type of Security	Real estate	Real estate
Lien creation	Voluntary by property owners	Statutory by governmental powers of the State
Lien priority	Time of recording in official records	Superior tax lien
Lien foreclosure	Non-judicial by Property Code §51	Tax sale by Tax Code §33
Average residential loan in Texas	\$190,000 (2013)	\$8,809.77 (2011) Less than 5% of mortgage
Residential market in Texas (number of loans made)	611,180 (2013)	10,854 (2011) Less than 2% of mortgage market
Dollar volume of market in Texas	Over \$116 billion	Over \$95 million (2011) Less 0.1% of mortgage market

Loan term	Long term Most commonly 30 years	Short to medium term Typically 2 – 10 years
Interest Rates	Highly competitive Determined by capital markets	Competitive between Licensees Determined privately
Loan holders (Private)	Major financial institutions and life insurance companies About \$5 trillion (2014)	Mostly held by originators
Loan holders (Public)	Fannie Mae, Freddie Mac, FHA, and others. About \$5 trillion (2014)	None
Average Texas residential borrower income	\$108, 000 (2013)	Unknown, but surely substantially lower
Credit rating of borrower	Very high	Low - unable to pay taxes
Sophistication of the market	Very high – studied intensely by academics, governments, investment bankers, and major banks	Low – most players are small businesses. No third party analysis other than OCCC

Discount points are a financial feature of long term mortgages.

Discount points exist for mortgages because lenders know statistically that on average mortgages will be fully prepaid long before maturity. The depth and sophistication of this type of probabilistic analysis is shown in the late UT Professor Elmira Popova’s paper “Bayesian Modeling of Mortgage Prepayment Rates” as well as numerous other models to forecast prepayment.

Mortgage lenders offer points as a means of front loading interest payments to increase their returns on the anticipated early-paid mortgages. Mortgage discount points are never refunded on prepayment. In order for mortgage lenders to offer discount points the mortgages must be long term and the lenders must have the sophisticated analysis that predicts how many loans will prepay and when. Clearly tax lien transferees are not doing this.

There are no standard rates for tax transfers.

As stated in our prior letter to the OCCC on this subject, tax transferees do not have the ability to have a “standard rate” off which discount point can give meaningful interest reductions. Mortgage rates are determined by national and international financial forces through large institutions. Examine the rate sheets that mortgage lenders use. Tax transferees produce nothing like that.

The proposed §§89.601(d) and 89.802 do not describe true discount points.

An essential element of mortgage discount points is that they are not refundable. The only way for borrowers to benefit from discount points is to make regular payments on the mortgage long enough that the front loaded points are spread enough to lower the effective interest rate below the standard rate they could have chosen without points. That break-even point is typically 6 to 8 years into a 30 year mortgage. If an “unearned” portion of the points is refundable, the proposed “discount points” are incorrectly named. Mortgage discount points are always earned when the loan closes.

Mortgage discount points are never paid to mortgage bankers or brokers.

Mortgage bankers or brokers are paid to originate loans for mortgage lenders. When those originators create mortgages with interest rates above normal, lenders typically pay them extra cash “yield spread premiums” for the increased values of the higher rate loans. When originators create mortgages at rates below normal, discount points are financed into the loan principal to compensate the lender for the lower rates. These discount points are never paid to the originators because the

lender would be giving away its compensation for the lower rate. Likewise, if tax transfer originators keep so-called “discount points” when originating for others, these fees are clearly not legitimate discount points. This fact doesn’t affect the proposed rules, but it could affect enforcement.

Correct to exclude discount points from “funds advanced”

We agree with the inclusion of §§ 89.601(d)(4) and (5) to prevent discount points from being funded with tax transfers.

Affiliated Businesses

The idea that the disclosure of affiliated business arrangements is sufficient to avoid abuses is illogical. The disclosures would mean practically nothing to property owners. Without a scheme for enforcing prohibitions for affiliate businesses charging unreasonable fees and costs to circumvent fee and cost regulations, it is difficult to understand what purpose these proposed regulations will serve.

Sincerely,



Richard Duncan



Yanira Reyes

Homefront Tax Loans

January 21, 15, 2014

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders

Dear Commissioner Pettijohn,

I support the proposed rules concerning property tax lenders. The proposed amendments are a true benefit to the industry and will not negatively impact my business.

The proposed rules, when enacted, will ensure property tax loans are provided fairly and sensibly to property owners. I believe discount points should be prohibited from Transfer of Tax liens because they are confusing and are a mortgage like product. However, if the OCCC must allow discount points, then I support that pre-paid interest charges be paid out-of-pocket at or before closing by property owner. Discount point fees must not be included in the interest bearing principal balance of a property tax loan.

Please feel free to contact me with any questions.

Best regards,

Doug Ruby
Director of Operations

Home Tax Solutions
Trey Rome - CEO
4849 Greenville Ave.
Tower Two, Suite 1265
Dallas, Texas 75206

1/22/2014

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders

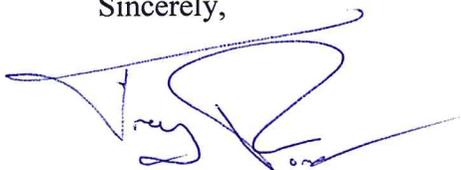
Dear Commissioner Pettijohn,

I support the proposed rules concerning property tax lenders. The proposed amendments are a true benefit to the industry and will not negatively impact my business.

The proposed rules, when enacted, will ensure property tax loans are provided fairly and sensibly to property owners. I believe discount points should be prohibited from Transfer of Tax liens because they are confusing and are a mortgage like product. However, if the OCCC must allow discount points, then I support that pre-paid interest charges be paid out-of-pocket at or before closing by property owner. Discount point fees must not be included in the interest bearing principal balance of a property tax loan.

I applaud the OCCC's efforts. Thank you for the opportunity.

Sincerely,



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OFFICE OF CONSUMER
CREDIT COMMISSIONER
RECEIVED

January 25, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders

Dear Commissioner Pettijohn;

Overall, I support the proposed rules concerning property tax lenders. The proposed amendments will be a benefit to the industry's consumers and will remove practices that create negative press for the industry. After further consideration of the proposed amendments as now written, the only item that I object to is the allowance of "discount points".

While I recognize that "discount points" are a legal and accepted practice in the mortgage industry, the proposed amendments requiring that these pre-paid interest costs be paid out of pocket at or before the closing has the practical effect of eliminating them. We have always offered the ability for customers to pay some or all of the closing costs up front, and they never elect to use this option. This experience leads me to confidently predict that less than 1 out of 1,000 tax lien transfer transactions will have a borrower elect to pay upfront for the discount points.

My concerns are threefold:

- 1) Tax lien transfer transactions are not mortgages, and the industry is under attack from the mortgage industry. Codifying a mortgage product concept into the tax lien transfer administrative code only bolsters the mortgage industry's case that tax lien transfers should be treated like mortgages.
- 2) Successfully servicing a property tax loan that incorporates discount points is very difficult. Interest may not be charged on the prepaid interest component, refunds of the unamortized portions of the prepaid interest have to be calculated and refunded, and APR calculations have to correctly incorporate the prepaid interest. It is our observation that the property tax lenders that currently offer discount points do not consistently follow these requirements due to their complexity. I am concerned they may evolve and continue their business model of pushing discount points, and subsequently not properly service the loan. The result will be additional consumer complaints and undesirable bad press for the industry because 1 or 2 company's actions.
- 3) Approximately half of our customers do not have a mortgage and therefore have probably not been exposed to the concept of discount points. We believe the industry is best served keeping our solution as simple as possible. The more complicated it is for consumers the more likely they are to make mistakes. That will result in consumer dissatisfaction, complaints, and bad press for the industry.

While I generally support a free market approach to business and in providing consumers with as many options as possible, my experience with our customers and other property tax lenders clearly suggests that the negative impact of allowing discounts points far outweighs the benefits to consumers or lenders.

I greatly appreciate the Commission's open, inclusive, and thoughtful approach to these proposed amendments. Thank you for the opportunity to provide my opinion.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ch E Brown".

Charles E. Brown
CEO
Hunter-Kelsey of Texas, LLC



LAW FIRM OF DANIEL J. YOUNG PLLC

DANIEL J. YOUNG
WM. JORDAN GUNKEL
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Friday, January 23, 2015

Leslie L. Pettijohn, Commissioner
Laurie Hobbs, Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

Dear Commissioner Pettijohn and Ms. Hobbs:

I would like to thank both of you—and the rest of the dedicated team at the OCCC—for reviewing these comments and considering modifications to the proposed rules published on December 26th.

As you know, the tax lien transfer industry is unique and a relatively small community. I represent several licensees who are very concerned with the impact of the proposed rules on their survival in this business. The makeup of the industry generally falls into two categories. Most of the market share is controlled by a few large, wealthy players who originate and fund liens for their own account. These entities realize their profit on a tax lien over the life of the repayment plan from the interest rate split and can afford to take a loss on originations—especially if it means that others in the industry will be forced out of business.

On the other end of the spectrum are the small, specialized originators who are generally unable to fund tax lien transfers on their own. They must sell or broker their accounts to a licensed investor. Thus they are dependent on some margin on the origination of an account to survive. Among my other issues with these proposed rules, the Agency has failed to make a detailed analysis of the economic impact on these small businesses as required by Chapter 2006 of the Government Code.

The October Proposed Rules vs the December Proposed Rules

The rules proposal published on October 31st were the product of a collaborative process. While I and others in the industry may have some disagreements with the fee cap reduction, the rules were not disruptive enough to dramatically change the playing

field. The amended rules distributed before the December Finance Commission meeting, however, were dramatically different in application.

For example, the October rules on discount points simply restated the *Norwood* case by defining the concept as “interest” and requiring the optional use of points reduce the stated interest rate below the par rate offered. The rules published on December 26th, however, would force a property owner to bring cash at closing or the option of discount points is wholly prohibited. In practice, such a requirement for upfront cash would mean that discount points are *never* an option for a typical property owner needing a tax lien transfer.

Most property owners utilizing tax lien transfers are in a dire position with little to no access to cash. Their credit risk is often significant, which necessitates a correspondingly high interest rate. The use of discount points can bring savings over the life of the repayment plan, whether or not the points are financed. But, for many consumers, a tax lien transfer is a *temporary* repayment plan that will be paid off long before the common five or ten year amortization. The most important factor to the consumer is often a smaller monthly payment while they reestablish sound financial footing. If that’s their goal, reducing their interest with discount points means their total payoff will be less than the higher rate alternative. They shouldn’t be prohibited from utilizing the option simply because they are unable to produce cash up front.

Whether discount points are a correct decision for a particular person can be addressed by disclosures and clear presentation of the options. That’s a great idea and clearly within the authority granted to the Agency by §32.06(a-4)(1). Unfortunately, the rules go beyond disclosures and exceed the powers delegated to the Agency by the Legislature. So long as the annual percentage rate for a contract to pay taxes does not exceed 18% (including discount points), the licensee has met the statutory requirements. The Agency can require recordkeeping requirements or check APRs to ensure compliance with the rate cap, but I find no authority for a rule requiring cash for discount points.

Scope of the Agency’s Rulemaking Authority

As you know, the statutes that create and structure the tax lien transfer industry, Sections 32.06 and 32.065 of the Tax Code and Chapter 351 of the Finance Code (the “**Tax Lien Statutes**”), have been amended and refined every legislative session since 2005. I imagine they will be revised yet again this year. The prudence of implementing administrative rules in the middle of a legislative session is questionable, but adopting rules that exceed the authority delegated to the Agency is patently unjustified.

Any rule may exercise only those powers conferred by the Legislature to an administrative agency in clear and express language—without any implied excess powers. *See, Larsen v. Santa Fe Independent School Dist.*, 296 S.W.3d 118, 250 Ed. Law Rep. 797 (Tex. App. Houston 14th Dist. 2009). The Tax Lien Statutes, on my read, delegate the Agency (through the Finance Commission) the power to make rules on only the following topics with emphasis on the two most relevant to this discussion:

- 1) (The form and content of disclosures, sworn affidavit, certified transfer, and payoff statements. §32.06(a-4)(1, 3, and 4).
- 2) **Rules that relate to the reasonableness of closing costs, fees, and other charges permitted by the Tax Lien Statutes. §§32.06(a-4)(2) and 351.0021(e).**
- 3) (Payoff procedures. §§32.06(a-6) and 32.06(f-1).
- 4) (Liens that prohibit the transfer of tax lien. §32.06(a-9).
- 5) (Advertising. §351.0023(f).
- 6) (Secondary market transactions. §351.003(c).
- 7) (Residential mortgage loan originator licensing. §351.0515.
- 8) **And the broadest category, “rules to ensure compliance” with the Tax Lien Statutes. §351.007.**

Discount points are *interest*, as the Agency correctly states in the preamble. That’s the same point we learned from the Texas Supreme Court in a case familiar to both the Agency and Finance Commission. Discount points “substitute for interest” and, like per diem interest, “can be calculated by applying a rate to principal over a period of time.” *Fin. Comm’n of Tex. V. Norwood*, 418 S.W.3d 566, 596 (Tex. 2013). “Interest” isn’t a fee or closing cost, even if it is added at the beginning of a transaction rather than spread over time. As such, the proposed rules on discount points can’t get their authority under power number two, relating to the reasonableness of a closing cost, fee or charge. Their authority then must fall under “ensuring compliance” with the Tax Lien Statutes.

The Agency wisely determined in the preamble that “[p]rohibiting discount points altogether seems inconsistent with Texas Tax Code, §32.06(e).” A prohibition is inconsistent because §32.06(e) is unambiguous: the interest rate cap is 18% per year. If the aggregate interest rate calculation falls below 18%, compliance is achieved. I would respectfully suggest that the Agency remove from the proposed rules all of 7 TAC §89.601(d)(4).

The Reduction in the Closing Cost Limit \$

The deletions in §89.601(c) of the tiered closing cost cap and the substitution of a general maximum fee of \$900 is unwarranted and should be removed from the proposal. As the Agency's data shows, interest rates are declining and closing cost fees are decreasing. Why make such a significant change?

Even though the average rates for closing costs typically fall below the current tiers, the higher cap provides flexibility when necessary. Market conditions will dictate where the interest rates and closing costs amounts fall, but arbitrarily reducing the cap could have unintended results. The industry may flock to the new cap limit to make up for the number of properties that have more origination expenses than can be charged under the reduced cap.

In addition, such a change places a disproportionate burden on small businesses rather than large. Large businesses often have cheap sources of capital and can afford to originate loans at a loss. They are able to make it up on the interest spread that is magnified by the size of their market share. A smaller business operates on thin margins and may be wholly dependent on a profit at origination since they can't afford to fund the payment of taxes on every property owner they wish to help. The small player doesn't realize the interest profits that are captured and maximized by the large, well-funded member of the industry.

Impact on Attorneys

The Agency has gone too far with the changes to §89.601(c)(5) as it relates to the work performed by a licensed attorney. When it comes to addressing a title defect on a property, the attorney typically represents only the lender. The standards for fixing title issues for a tax lien transfer are often different than those necessary to make title to the property suitable for many other real estate transactions or acceptable to any given title company. Many properties involved in a tax lien transfer have never come across the desk of a title insurer, so there are myriad issues like owner financed transactions, complex heirship issues, and documents found off the internet. Assessing the defect for the lender involves some degree of risk calculation.

The Agency may require a licensee to produce invoices or other documentation to ensure that allowable charges for attorney review are in fact legitimate or paid. There is no authorization, however, to dictate what an attorney representing a licensee must provide to a non-client. Further, many property owners may be confused and think they have an attorney representing their interests in the transaction. The signed

statement discussing “title defects” may imply that all problems have been solved or that title is somehow insured by the attorney. I would request that the rule be reverted back to the language used in the proposal published on October 31st.

Thank you again for your consideration. Please don't hesitate to get in touch with me if you have any questions.

Very truly yours,



J. Christopher Creel

THE LAW OFFICE OF
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January 23, 2015

Ms. Laurie Hobbs
Assistant General Counsel
Office of the Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705-4207

RE: Response to Proposed Regulatory Amendments – December 26, 2014
Texas Register

Dear Ms. Hobbs:

Please accept the following comments in response to the Office of Consumer Credit Commissioners proposed amendments to 7 TAC §§ 89.102, 89.207, 89.504, 89.601, and 89.802, as published in the December 26, 2014 Texas Register. Thank you for allowing us this opportunity to share our thoughts on the proposed amendments.

7 TAC § 89.102

We have no objections to the proposed amendments and support their approval.

7 TAC § 89.207

We have no objections to the proposed amendments and support their approval.

7 TAC § 89.504

We have no objections to the proposed amendments and support their approval.

7 TAC § 89.601

1. We object to the proposed limits to closing costs. Pursuant to the OCCC's published data referenced at 39 TexReg 10125, the average closing costs for residential property tax loans in 2013 was \$707.00. This suggests that market forces are already operating to lower closing costs on residential property tax loans. We believe market forces will do a better job regulating closing costs than regulatory amendments. We see no purpose in adding additional regulations to enact what the market is already doing. Restraining the ability and manner

through which lenders can compete against one another homogenizes the market and limits consumer choice, only benefiting the largest of competitors. The current limits are fair, flexible, and allow more latitude for lenders to compete on the open market through greater flexibility in offered loan terms. We believe this proposed rule unduly burdens small businesses, to the advantage of larger competitors, and request the Commissioner institute an investigation on the impact of closing cost regulations on such small businesses.

2. We further object to the language in 7 TAC § 89.601(c)(4) that allows an additional charge of “up to \$100.00” for each additional parcel. 7 TAC § 89.601(a) provides that the closing cost cap only applies to property tax loans secured by property designated as “Category A (Real Property: Single-Family Residential),” and homesteads designated as “Category E (Real Property: Farm and Ranch Improvements)” by the Property Classification Guide published by the Texas Comptroller of Public Accounts. We request clarification that the additional \$100.00 for each additional parcel be clarified to only apply to the aforementioned Category A and Category E Property Classification, as published by the Texas Comptroller. The intent of this request is to clarify exactly what types of real property the \$100.00 additional fees apply to.

3. We request further clarification on 7 TAC § 89.601(c)(5)(A) which limits recording costs to “recording costs that are not paid to a governmental entity” We believe this language prohibits recovery of legitimate third party recording fees incurred when e-recording documents with a county clerk’s office. Since this language could potentially exclude certain charges legitimately associated with the recording process, we object to this section and request amendment to include e-recording fees to paid to a licensed e-recording provider.

4. We object to the OCCC’s attempt to regulate discount points stated in 7 TAC 89.601(d). An administrative agency is a creation of the legislature, and as such it has only the powers that are delegated to it, expressly or impliedly, by the legislature. *Tex. Coast Utils. v. R.R. Comm’n of Tex.* (423 S.W.3d 355; 2014 Tex.) In Tex. Tax Code § 32.06(a-4)(2), the Texas Legislature empowered the Finance Commission of Texas to “adopt rules relating to the reasonableness of **closing costs, fees, and other charges** permitted under this section.” (emphasis added) Since the legislative rule making authority granted to the Finance Commission only authorizes the Finance Commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section, the Finance Commission does not have the authority to regulate interest rates. Because closing costs, fees, other charges, and interest are all legally distinct concepts, we believe the Texas Legislature only intended the Finance Commission to regulate closing costs, fees, and other charges and reserved the authority to regulate interest rates solely to the Texas Legislature. The Legislature capped the interest rate on tax loans covered by Tex. Tax Code § 32.06 at 18%. Accordingly, so long as a lender follows the appropriate rules for calculating interest already provided by the Legislature regarding interest calculations, the

OCCC and Finance Commission are only authorized to enforce the existing statutes regarding property tax loan interest rates and does not have the independent authority to implement rules regulating interest rates.

The OCCC claims its authority to adopt these rules pursuant to Tex. Finance Code § 351.007 and Tex. Finance Code §11.304. We believe that neither of these statutes authorizes the Finance Commission to regulate interest above and beyond what is already provided by the Legislature.

§ 351.007 gives the Finance Commission a broad mandate to “adopt rules to ensure compliance with this chapter”. However, this language only provides the Finance Commission with authority to adopt rules to implement the statutes in embodied in Chapter 351 of the Tex. Finance Code. There is nothing in Chapter 351 of the Finance Code that addresses interest rates and § 351.007 does not give the Finance Commission the authority to regulate interest.

§ 11.304 is even broader than § 351.007, allowing the Finance Commission to “adopt rules necessary to supervise the consumer credit commissioner and ensure compliance with Chapter 14 and Title 4. Chapter 14 of the Texas Government Code does not provide any authority for the Finance Commission or the OCCC to regulate interest, and Title 4 (via § 302.001) already provides statutory guidance on how to calculate and account for interest.

Notwithstanding the foregoing, we further object to the requirement in the proposed 7 TAC 89.601(d)(4) requiring that any discount points be paid by cash, check, or electronic fund transfer before or at closing of a property tax loan.

- a. We believe this rule serves no true purpose and, pursuant to Tex. Gov't Code § 2001.031, we hereby request a concise statement to the principal reasons for and against its adoption.
- b. As stated above, we believe that neither the Finance Commission nor the OCCC has the authority to enact rules relating to interest. That is reserved to the legislature.
- c. We further object to this rule because it violates the method defined by the Legislature for calculating interest rates. Tex. Tax Code § 32.06 caps property tax loan interest rate at 18% and Tex. Finance Code § 302.001 requires interest to be calculated using the actuarial method. So long as a lender complies with the legislatively determined methods for calculating interest they are in compliance with the law. The proposed rules contradict the established law and create an unnecessary ambiguity.

7 TAC § 89.802

We have no objections to the proposed amendments and support their approval.

Thank you very much for allowing us the opportunity to review and comment on the proposed rules. We hope you find our comments helpful and look forward to discussing these issues further as the rule making process moves forward.

Sincerely yours,

Law Office of Nathan C. Cace, P.C.



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cc:

January 23, 2015

Leslie L. Pettijohn, Commissioner
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

RE: Proposed Rules regarding 7 TAC §89 concerning Tax Lien Lending

Commissioner Pettijohn:

We wish to register our objection to the amendments to 7 TAC §89.601(c) regarding closing costs.

Our objection centers on a belief that the change proposed would prove anti-competitive and discriminatory against certain lenders.

While it is true that the average closing costs have declined over time, this fact does not justify a lowering of the cap. In fact, it is more logical to state that the natural lowering of the cap indicates no need to change the regulatory framework as the market place is regulating costs adequately.

More seriously, we contend that the proposed cap would force a certain type of originator out of business. Other input to the agency has indicated that closing costs are below or even significantly below the new proposed cap. Such testimony is highly suspect as the amounts quoted represent only a fraction of the true costs of origination. Our related licensed Tax Loan Fund buys loans from a network of loan originators and we are very familiar with their costs and overall economics. The true cost of originating a tax lien loan goes far beyond just the cost of a title search, property inspection, and recording costs. The table below represents the average cost to originate a tax loan within our originator network:

Average Loan	\$15,403.72
Average Taxes	\$13,438.93
INCOME	
Closing Fees	\$1,099.49
Pts rebated to originator as a premium	\$865.29
TOTAL INCOME	\$1,964.78
COGS	
Attorney Fee	\$38.05
Closing Fee	\$150.00
Courier & Delivery	\$25.00

Credit Report	\$10.65
Flood	\$5.00
Inspection	\$57.75
Recording	\$75.00
Title	\$32.10
TOTAL COGS	\$393.55
GROSS PROFIT	\$1,571.23
EXPENSES	
Salaries & Benefits	\$639.57
Commissions	\$78.58
Marketing & Promotional Costs	\$540.82
Facility Costs	\$98.32
Postage and Delivery	\$28.21
Office Supplies	\$20.00
Other General & Administrative	\$65.00
TOTAL EXPENSES	\$1,470.50
NET PROFIT	\$100.73

Table 1

Evidence shows that competition has lowered the average closing costs to a level that is below the true cost of origination. It is one thing for a business to choose to take a loss on origination (at least for a time) for a competitive advantage. It is quite another to force all originators to operate at a loss in originations. To do so will drive most originators out of business who do not meet a certain business profile, i.e. large, established originators with access to institutional or extremely cheap financing who originate and own their own loans. Such an originator is able to capitalize their losses in their origination arm and make it up in the interest rate spread over the life of the loan.

A small originator without access to cheap investment capital or who sells their loans must make a profit at origination or they will be forced to close their doors. Such an outcome would be disastrous for consumers. The industry will lose innovation. The industry will lose the small originator who invariably establishes a closer relationship to their borrower than does the “Walmarts” of the tax lien lending industry. The industry will lose some niche originators who serve property owners that ‘the big boys’ refuse to touch or can’t penetrate for a variety of reasons.

A secondary objection to this rule is that even if the general cap is lowered, a complete flattening of the closing cap tiers is ill advised. While it is true that some expenses of origination are constant regardless of the size of the transaction, this is not true of all expenses.

For example, it would be imprudent to apply the same level of scrutiny when considering a loan of \$5,000 versus a loan of \$50,000. A prudent originator would certainly pay for a more definitive title report. They would examine more closely the property value. Additionally, they would use

more scrutiny in examining the borrowers' ability to pay. At a minimum the current §601(c)(2)(E) should be preserved for larger loans. Without such a provision even if an originator could operate below the cap for most loans, they would still likely charge the full cap amount in order to make up for the losses incurred in underwriting larger transactions. Making the 'little' borrower subsidize the 'big' borrower is quite contrary to the spirit and purpose of the Commission!

We further wish to register our objection to the addition of 7 TAC §89.601(d) regarding discount points.

First, we believe that because of the requirements in subsections (4) and (5) the agency is disingenuously banning discount points under the guise of regulating them. Overwhelmingly, the property owner who is seeking a tax lien loan is cash strapped. They have no savings and have extremely limited options of raising even an extra week's pay. Requiring discount points to be paid in cash takes yet one more option away from borrowers who have precious few options in the first place.

As you can see from *Table 1* above, the profit margin for the average tax lien lender is quite small and depends both on the varying mix of fees and discount points. Because our average originator successfully sells the benefits of discount points to a majority of their customers, it gives our Fund the ability to pay that amount back to the originator in the form of a premium. This keeps the originator in the black and fully shifts to the Fund the risk of having to calculate and refund an interest rebate upon an early payoff.

However, the benefit of discount points for the originator is actually secondary to consumer benefits. Paying discount points can be a good option for a borrower under several different scenarios. Most importantly, the total amount paid over the life of a loan can be lower if the rate is bought down with discount points ... even when the points are financed. Consider this example:

	No Discount	With Discount Points Financed
Taxes Owed	\$12,000	\$12,000
Allowable Origination Fees	\$2,000	\$2,000
Discount Points (\$350 per each 1.0%)		\$1,050
Term (in Months)	120	120
Note Rate	13.00%	10.00%
APR		12.189%
Monthly Payment	\$211.36	\$200.95
Total Payments	\$25,363.20	\$24,114.00

Table 2

Why would an agency purposed to protect the rights of borrowers sentence a real-life borrower who came to one of our originators with economics almost identical to this example to pay an extra \$1,250 over the life of their loan because they could not raise \$1,050 in cash today?

The economic benefit of discount points is even greater for another customer class. That customer who is certain that they will pay off their loan significantly early can benefit greatly by negotiating

a longer term, buying down the rate for a lower monthly payment and then paying off the loan early. They benefit in two ways. They free more operating capital for their family or business in the near term and when they receive the lump sum to pay off the loan they pay less total interest expenses.

Additionally, banning the use of discount points is anti-competitive. It was apparent from the testimony already provided that some lenders who do not utilize discount points are attacking those who do. The agency through this rule is wrongly siding with one, narrow method of operating a lending company. There is no justification for removing from all tax lien lenders one way of providing borrowers options which has been a common practice in real estate lending for generations.

Finally, we believe it is unnecessarily over-regulating to dictate such a detailed new disclosure when discount points are clearly shown on a HUD statements and when the practice of discount points is so common in real estate transactions. That said, our originators never shy from explaining *every* aspect of the tax lien transaction to their borrowers and we would not object to (yet another) disclosure educating borrowers about discount points.

Cordially

Paul Halstead
Senior Vice President
Ovation Financial Services

7990 IH-10 West, Suite 200
San Antonio, TX 78230

January 26, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs, Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd
Austin, Texas 78705-4207
Via email: Laurie.Hobbs@occc.state.tx.us

Re: Support for Draft Rules Addressing Tax Lien Transfer Costs

Dear Ms. Hobbs:

Propel Financial Services, LLC would once again like to thank you and Commissioner Pettijohn for your extensive work drafting rules relating to fees and costs charged by tax lien transferees in Texas. Propel appreciates the opportunity to comment on the proposed amendments concerning tax lien transferees published in the October 31 Texas Register (39 Tex. Reg. 8484). We continue to believe that the proposed amendments make excellent headway toward balancing the interests of Texas property owners with those of tax lien transferees.

We have reviewed the proposed rules in detail. We appreciate that the OCCC incorporated many of the commenters' suggestions made over the last four months into the draft rules. In particular, thank you for incorporating the following recommendations into the draft rules:

89.207(7) - "Salaried employee"

As drafted in the ANPR, the term "salaried employee" referred only to employees who are not hourly workers, i.e., those employees commonly referred to as "exempt" or excluded from certain workplace laws. Propel thanks the OCCC for removing of the word "salaried", to clarify that the prohibition applies to work done by any employee, whether salaried or hourly.

89.601 (c)(5) – Permissible Closing Costs for Clearing Title

Permissible costs - When the Tax Code was first amended in the mid-2000's to permit closing costs, the legislature intended to protect consumers from abusive practices and to allow transferees to recover the actual costs of closing a transaction, as opposed to creating a springboard for new profit centers. Propel believes that the proposed amendment in §89.601(c)(5) fulfills this intent, by limiting permissible costs for clearing title defects to "recording costs paid to a government entity and reasonable attorney's fees paid to a person who is not an employee of the property tax lender." Therefore, Propel supports this proposed amendment.



The Propel Financial Services Family of Brands



Transparency

Propel supports the draft rule's provision that affiliated business arrangements should be disclosed, as provided in §89.504. Propel also supports the need for proof of invoices for work performed and proof of payment in both electronic and paper copy, as provided in §89.207 (3) (A).

In addition to supporting the provisions cited above, Propel additionally urges reconsideration of the following suggestions and comments:

89.601 (d) - Discount Points

As stated in our comments during the ANPR process, the precomment period, and the comment period, Propel remains concerned that a handful of licensees are attempting to disguise a portion of their closing costs as discount points. The practice observed in the industry, which was supported by commentary during the ANPR and precomment periods, is that certain licensees originate transfers but immediately sell them to an unrelated funding company, keeping the closing costs and "discount points" as their sole compensation for each transaction. What this practice has created is a system whereby these originators have incentive to charge high discount points, although the rate charged by the licensee actually funding the loan does not decrease proportionately. In effect, the "points" are not true interest reductions, but additional fees charged by the originator to maximize his profits.

By comparison, Propel urges the Commission to consider the following traits of true discount points:

1. The only type of loan that otherwise offers discount points is long term residential mortgages that most commonly have 30 year terms. By comparison, the average life of a tax lien transferred to Propel is three years.
2. Each bona fide mortgage discount point pays for a small reduction, typically 1/8 or 1/4 percent, in the mortgage interest rate below a standard rate. That standard rate could be a lender standard or a market standard. There is no standard rate for tax lien transfers. The proposed regulations do not address a standard rate, any logical connection between the points and amount of rate reduction, or a limit to the number of points that could be charged. There is no practical means in the proposed regulations to determine if so-called discount points are legitimate.
3. Unlike the behavior recently in the tax lien business, legitimate discount points are never retained by mortgage bankers or brokers. Such originators are only paid a fee (yield spread premiums) by mortgage investors when the originators create loans with interest rates higher than the standard rate. Investors don't pay extra for lower interest rate mortgages. Any tax lien transfer originator who retains so-called discount points when originating for another licensee is clearly perpetrating a fraud by characterizing origination charges as reduced interest.
4. Unearned discount points have been the bane of mortgage regulators for decades. The Federal Reserve has recognized the problem, stating that charging unearned discount points could be unfair or deceptive acts or practices in violation of the Federal Trade Commission Act and possibly run afoul of ECOA and FHA.

Texas mortgage law deals with the reality of discount points that are offered nationwide for mortgages, but our law does not address whether all Texas businesses have a right to offer discount points for any type of loan--mortgages or otherwise. The statutory scheme governing transferred property tax liens does not authorize the charging of discount points, and there is no reason why the OCCC should create the additional charge that is inappropriate and for which compliance is unclear and unenforceable.

Nevertheless, if the use of discount points is permitted, Propel encourages the Finance Commission to adopt strict rules governing their use, including:

1. As with mortgage discount points, the rate benefit to the property owner must "break even" long before the maturity.
2. A mathematical formula for precisely determining the "standard rate" off which the discount can be taken.
3. A scheme for limiting the number of permissible points and a stated minimum amount of interest reduction that each point must purchase.
4. Banning the use of discount points entirely in situations where they are not legitimate. §89.601(d)(1) of the draft rules specifies the conditions discount points must meet to be considered legitimate, but Propel does not believe the rule goes far enough.
5. Requiring offers with and without points be given to customers, with proof of the discount points' legitimacy, as provided in §89.601(d)(1)(C) and §89.102(x).
6. Requiring that property owners be informed that they will be refunded any unearned discount points upon early payoff, as provided in §89.802.

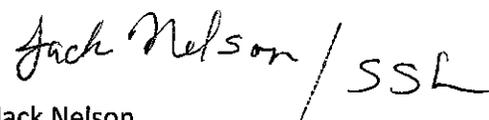
89.601 – Closing Cost Caps

The Texas tax lien industry is under attack by parties who have attempted to denigrate property tax lenders by referring to them as "payday lenders" – although that comparison could not be more inaccurate. Propel charges interest rates that are regularly as low as 10 percent—less interest than a property owner would incur under a County tax payment agreement. Our closing costs also are amongst the lowest in the industry. In an effort to reduce the costs of the product even further, Propel submitted numerous comments to the Finance Commission explaining why drastic cuts would still allow for healthy competition amongst licensees while providing plenty of options to property owners.

Propel appreciates the proposed \$900 general maximum fee limit but again urges the Commission to consider a \$500 general maximum closing cost cap. The proposed rule also generously allows \$100 per each additional parcel, reasonable attorney fees, and associated recording costs. Although \$900 is much better than the caps provided by the current system, it far exceeds an amount necessary to recover costs directly associated with closing most transactions. Propel's average third party costs on a single property transfer are below \$300, and we believe that most or all tax lien transferees can comply with a \$500 cap with relative ease. **The closing cost cap is intended to reflect costs associated with each transaction, and should not serve as a method of recovering overhead or creating a profit center for tax lien transferees.**

Thank you for considering these comments. If you need any additional information, please contact me at (210) 581-7744 or [REDACTED]

Sincerely

A handwritten signature in black ink that reads "Jack Nelson / SSL". The signature is written in a cursive style with a diagonal slash separating the name from the initials.

Jack Nelson
President

January 23, 2015

Laurie Hobbs, Esq.
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705-4207
Via email: Laurie.Hobbs@occc.state.tx.us

Re: Draft Rule Amendments on Tax Lien Transfer Costs

Dear Ms. Hobbs:

I am writing on behalf of Protect My Texas Property (PMTP) to provide input on the OCCC's proposed rulemaking on the costs allowed for property tax loans that were published in the Texas Register on December 26, 2014. PMTP is an alliance of homeowners, business owners, and Texas residents united in our goal of protecting property owner rights. We have over one thousand supporters and followers throughout Texas, and we believe that tax lien transfers are an important option and property right for property owners facing financial difficulty, and that they can save property owners money and ultimately help keep them in their homes and businesses. Thus, PMTP advocates for the continued availability of affordable and flexible tax lien transfers.

PMTP appreciates the significant time and thought that the Finance Commission and OCCC have invested in this rulemaking, and we remain very supportive of the draft rules. After multiple rounds of written and verbal comments, and several iterations of the proposed rules, we believe the proposed rules last published enhance property owner protections without compromising access to a competitive marketplace for tax lien transfers.

We understand that the Finance Commission had questions or comments regarding the use discount points in connection with a Tax Lien Transfer. PMTP supports the proposed changes around discount points, and we would like to reiterate our previous comments recommending additional disclosures to property owners around discount points to ensure that transactions are totally transparent. This would include requiring discount points to be reflected on payoff statements in a manner that makes clear to the property owner any money that would be due to them if he or she satisfies the agreement early, and ensuring that prepaid interest is kept separate from interest bearing principal to avoid charging property owners interest on the prepaid interest.

PMTP and our supporters throughout Texas appreciate the OCCC's commitment to protecting

property owners, and we appreciate the substantial effort that has been put into ensuring a fair and thorough rulemaking process.

Sincerely,

Jim Arnold
Executive Director
Protect My Texas Property

1/9/2015

Dear Commissioner Pettijohn,

Thank you for providing a copy of the re-proposed amendments covering Ch. 89 Property Tax Lenders. I believe these proposed amendments are a strong step forward for the industry. The proposed rules provide greater protection for consumers while still allowing the competitive marketplace to function without undue interference.

Of particular interest to our company was the regulation of discount points. I feel very strongly that discount points should not be financed or included into the principal balance of the loan as stated in your current amendment. It is my hope that your proposed amendments regarding discount points will be adopted as is.

Thank you for the opportunity to provide input into this process.

Best regards,

Matt Longhofer

Matt Longhofer
Resolution Finance LLC

Sombrero Capital

4515 San Pedro Ave.
San Antonio, TX 78212

January 23, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Lenders

Dear Commissioner Pettijohn,

I applaud your office's continuing efforts to protect the interests of the consumers of property tax loans. The proposed amendments are reasonable and will not negatively impact my business. However, discount points are a questionable practice when applied to property tax loans. I have detailed suggestions aimed to control the potential problems that will arise from allowing discount points in the tax lien transfer industry. My suggestions are as follows:

1. Discount point charges must be paid up-front. A discount point is prepaid interest. If a lender wishes to charge fees for offering discount points, then those fees must be paid out of pocket at closing by borrower. Some lenders add the amount of pre-paid interest charges to the loan closing costs, resulting in the lender charging interest on interest. Requiring these charges be paid up front will ensure lenders do not charge interest on interest.
2. Require bona fide discounts. Healthy competition has driven market interest rates well below 18% and it is unreasonable for a lender to begin discount point calculations from 18%. The OCCC must demand customers receive fair and bona rate reductions from market rates. If lenders begin rate reductions from the allowable maximum, then consumers are being deceived.
3. Require minimum rate reduction. A single discount point must have a minimum value of 25 basis points. Consumers benefit from reasonable interest rate reductions should they so choose to purchase a discount point(s).

4. Subject discount points fees to the \$900 fee cap. The OCCC must require charges for discount points to fall within the \$900 fee cap. It defeats the purpose of the fee cap if it can be easily exceeded through discount points.
5. Require a Discount Point Disclosure – The OCCC must require lenders provide a single page disclosure stating: “Discount points are optional charges for your property tax loan. Other property tax lenders may offer similar rates without charging you fees for discount points. You should inquire discount point policies from other licensed property tax lenders. Contact the Office of Consumer Credit Commissioner’s Office should you have any questions, 800-538-1579.”
6. Detail who benefits from discount points. Companies who strictly originate loans must not benefit from fees generated through discount points since prepaid interest charges are not considered a permissible closing fee. Proceeds from discount points must be held by the ultimate lienholder, because a refund will have to be issued if the loan is satisfied early. The originator will be incapable of refunding borrower, because the relationship no longer exists.

I appreciate the opportunity to voice my suggestions. Should you have any questions, please do not hesitate to contact me.

Yours truly,

Eric S. Covey
President
Sombbrero Capital



January 26, 2015

Leslie L. Pettijohn, Commissioner
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

RE: Proposed rules regarding 7 TAC §89 concerning Tax Lien Lending

Commissioner Pettijohn:

Tax Advances would like to go on record registering our objection to the amendments to 7 TAC §89.601(c) regarding closing costs and to 7 TAC §89.601(d) regarding discount points.

All stakeholders, to the **amendments of 7 TAC §89.601**, should **“really”** focus all of our **considerations** on how Texas property owners would best be served. Instead, I fear the focus is more about larger competitors strategizing to push smaller loan originators out of business enabling them to capture a larger share of the market, under the facade of **“we are looking out for the consumers”**.

As a small originator in an extremely competitive market, it is necessary for Tax Advances, and many other small originators, to utilize investment capital from larger firms to offer flexible property tax loans to homeowners so they will not lose their homes. Without our own funding capabilities, we rely on the origination fees and discount points to be able to meet our financial obligations in running our businesses. Maintaining the current fees and discount policies will help insure a competitive landscape that will continue to benefit Texas consumers. Free enterprise is currently alive and working in Texas property tax lending. Consumers have a wide choice of lenders/originators to negotiate with providing them with the best possible solutions to meet their specific needs allowing them to stay in their homes.

As you are already are aware, the origination costs to property owners have come down dramatically due to the competitive nature of our business with over 70 OCCC licensed originators now serving the industry. While the cost to the property owners have come down dramatically, the actual cost to the loan origination companies have increased.

Commissioner Pettijohn, to further reduce origination fees beyond the current well thought out guidelines and to, in effect, eliminate discount points, will create an injustice to the property owners by putting them more at risk in the long run with fewer options to assist them with their property taxes which will increase their cost and risk of losing their property.

I do not see the consumer upside of putting companies like Tax Advances out of business, substantially reducing the competition for property owners to secure flexible, affordable loans and increasing the potential risk for them to lose their homes.

WE PLEAD FOR THE OCCC TO CONTINUE TO protect Texas property owners/consumers by allowing them competitive solutions for their property tax loans, TO allow real competition, TO protect small businesses like Tax Advances so we can keep people employed in Texas.

Thank you for your consideration.

Sincerely,



Jerry L Morrison
President
Tax Advances LLC



January 22, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders

Dear Commissioner Pettijohn,

Tax Ease supports the proposed rule amendments concerning property tax lenders. We believe that property tax lenders should hold themselves to the highest standards and that protecting homeowners and their equity by not adding undue financial stress upon them should be of utmost importance. Tax Ease has implemented stringent guidelines in its underwriting process and we support any rule amendments that ensure all property tax lenders will follow the same guiding principles.

We view discount points as a legitimate form of prepaid interest as long as the effective Annual Percentage Rate (APR) does not exceed 18% as described in the Texas Tax Code. Tax Ease currently abides by these principles and is compliant with the industry standards. Tax Ease supports the Finance Commission of Texas' rule amendment that discount points be paid by the borrower at or before the closing of the loan and that such funds may not be included in the principal balance of the loan. Discount points should be considered prepaid interest, not principal, and we see value in preventing interest from being effectively charged on top of interest. We believe the property tax lending industry does its best to protect property owners from excessive fees and Tax Ease upholds these standards vigorously.

Tax Ease also supports protections of the homeowner from excessive closing costs. Over the past few years, competitive pressure in the tax lending industry has driven closing costs lower. We trust however, that the maximum fee limit for closing costs as set forth in the amendments of \$900 is a fair and reasonable balance between the borrower and property tax lender. Tax Ease believes that low, competitive closing costs are good for property owners and good for the industry.

As a property tax lender with a longstanding heritage in Texas, Tax Ease is an advocate for homeowners statewide. Tax Ease demonstrates this daily through its rigorous standards in underwriting guidelines and servicing procedures. We appreciate your continued support of the property tax lending industry and the opportunity to comment.

Sincerely,



Mark Shapiro

Chief Executive Officer

O: 214.420.5981

C: 303.482.7218

F: 972.755.3007

[REDACTED]

14901 Quorum Drive

Suite 900

Dallas, TX 75254

TEXAS MORTGAGE BANKERS ASSOCIATION

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January 26, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705
Via email: Laurie.Hobbs@occc.state.tx.us

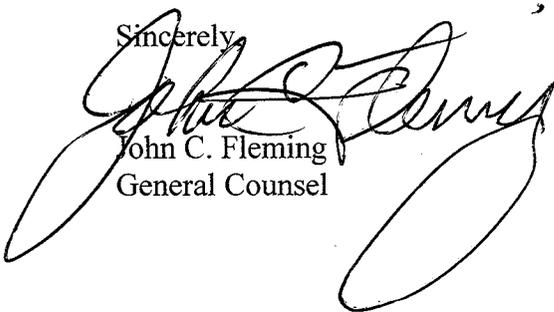
Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders

Commissioner Pettijohn:

I am writing on behalf of the Texas Mortgage Bankers Association (TMBA) relating to the repropoed rules for Property Tax Lenders.

TMBA believes that the proposed language correctly recognizes that discount points are a form of prepaid interest. As such, we also believe that discount points are not a permitted charge under Tax Code 32.06. Because Section 32.06 does not contemplate the imposition of discount points, TMBA would urge that the proposed rules be amended to prohibit the imposition of discount points. To do otherwise, in our opinion, would be to authorize a charge that is beyond what is permitted by statute.

Sincerely,



John C. Fleming
General Counsel



Texas Property Tax Lienholders Association

January 26, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

Dear Commissioner Pettijohn,

Thank you for the opportunity to provide additional comments on the OCCC's draft of proposed rule amendments regarding property tax lenders. As always, the TPTLA is supportive of reasonable regulation for the industry. The TPTLA is in support of the proposed rules and believes the rules will ensure property tax loans are provided fairly and sensibly to property owners.

We would like to provide specific commentary regarding the topic of discount points. The TPTLA supports the elimination of discount points altogether. We believe that discount points are not appropriate in the tax lien transfer industry. The TPTLA believes that discount points can be very confusing to customers, and could be used as a way to circumvent the closing fee caps. The TPTLA supports a position where property owners can easily understand the true costs of a TLT – interest rate and closing costs – without the possibility for customer confusion created by the introduction of discount fees. The TPTLA also notes the trend that those companies that charge discount points are also charging the maximum amount of closing costs (in addition to the discount points).

However, if the OCCC allows discount points, the TPTLA believes that additional clarification and limitations are appropriate.

1. The TPTLA supports the OCCC's rule amendments requiring discount point charges be paid up-front by borrower(s). Pre-paid interest charges must not be included in the interest bearing principal balance of a property tax loan. Borrowers benefit from this requirement because interest on interest charges will be prevented.
2. Legitimate discount points should be classified as **prepaid interest**. As such, if the property owner pays off the account during the "discount period," the transferee shall refund the appropriate portion of the discount fee. For these reasons, we also encourage the OCCC to require that any discount points be itemized on monthly statements and payoff statements and to clarify that interest cannot be charged on the amount of the discount points.



Texas Property Tax Lienholders Association

3. The TPTLA encourages the OCCC to cap the maximum amount of discount points that can be charged. Discount points in the mortgage industry, for example, do not typically exceed 200 basis points, and the TPTLA encourages the OCCC to look to other industries to determine a reasonable range of discount points or subject discount point charges to the proposed \$900 fee cap.
4. The OCCC must require lenders provide borrower(s) with the appropriate tax forms, at signing, to properly notify IRS and borrower(s) of total pre-paid interest charges to be deducted from respective tax return filings.

The TPTLA believes that the proposal drafted by the OCCC is a big step in the right direction for our industry. We appreciate the opportunity to be involved in the process.

Sincerely,

Monika Wilson
Texas Property Tax Lienholders Association
[REDACTED]





TEXAS PROPERTY TAX LOANS

An FYP Company[®]

January 23, 2015

Commissioner Leslie Pettijohn
Attn: Laurie Hobbs
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

Via email: Laurie.Hobbs@occc.state.tx.us

Re: The Finance Commission of Texas (commission) proposed amendments to §89.102, 89.207, 89.504, 89.601, and 89.802, concerning Property Tax Lenders

Dear Commissioner Pettijohn,

We support the proposed rules concerning property tax lenders. The proposed amendments are a true benefit to the industry and will not negatively impact our business.

The proposed rules, when enacted, will ensure property tax loans are provided fairly and sensibly to property owners.

We believe that discount points should be prohibited from Transfer of Tax liens because they are not included in 32.06, they are confusing and therefore potentially deceptive to the consumer and are a mortgage product designed for large balance loans. Discount points are by definition pre-paid interest. Therefore if the OCCC determines they must allow discount points, we would then support the pre-paid interest charges being paid by the property owner before or at closing. Discount point fees must not be converted to principal and included in the interest bearing principal balance of a property tax loan since this would allow interest to be charged on interest.

We applaud the OCCC's efforts. Thank you for the opportunity.

Sincerely,

Fred Brown
President, COO



11503 Jones Maltsberger Rd, Ste 1201
San Antonio, TX 78216-2818
210-201-1175 - www.us-ptl.com

January 23, 2015

Leslie L. Pettijohn, Commissioner
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

Commissioner Pettijohn:

We wish to object to the proposed amendments to 7 TAC §89.601(c) regarding closing costs and 7 TAC §89.601(d) regarding discount points.

We are certain that the proposed changes would hurt Texas consumers, be anti-competitive and discriminatory against small businesses such as USPTL.

In your publication of the proposed change to closing fees you state the average closing costs have declined over time. It is clear that the marketplace has achieved your objective without adding new regulations regarding closing fees.

As a small business that depends on origination profits we are unable to originate loans at a loss unlike large players in the marketplace (Tax Ease, Propel, Hunter Kelsey, and others) which in some cases are publicly held companies that are happy to originate loans at a loss and then make up for it in profits from the interest rate spread they enjoy from those assets.

We are a small business that employs 11 full-time and 2 part-time individuals who depend on us for their livelihood.

Our average cost per loan is as follows:

	Per Loan
Advertising	\$325
Title, Legal, Mobile Notaries	\$253
Payroll & Benefits	\$680
Office Expenses	\$150
Total per Loan	\$1,408

The suggested changes in discount points is just another way the OCCC is caving in to the large players in the industry who would like to put us out of business. **Requiring borrowers who are already cash poor to pay discount point in cash in effect eliminates discount points.**

The OCCC is ignoring the fact that discount point can benefit the borrower to reduce monthly payment terms and total obligation. The following illustration shows how our rate of 9.9% fixed interest rate and a \$1,150 discount charge vs. industry average of 13% fixed rate and no discount results in the borrower paying \$1,343 less over the life of the loan.

	USPTL Scenario with Discount	Industry Average without Discount
Taxes Owed	\$12,000	\$12,000
Allowable Origination Fees	\$1,600	\$1,600
Term in Months	120	120
Fixed Interest Rate	9.90%	13.00%
APR	12.85%	13.85%
Discount	\$1,150	
Monthly Payment	\$198.76	\$209.95
Repayment Obligation	\$23,851	\$25,194

Our HUD statement clearly documents the discount points in the same fashion that any real estate related loan does.

Lowering origination fees to \$900 and in effect eliminating discount points would put us out of business,

We appeal to the OCCC's:

- to protect consumers by allowing choices for financing their property taxes using different options
- allow competition in the marketplace
- protect small businesses
- keep Texans working

Sincerely,



Jacob Goldstein
Partner
USPTL LLC

USPTL Employees that will be affected by these new regulations:

Employee	Status
Andre Cardenas	Owner
Jacob Goldstein	Owner
[REDACTED]	Married with Children
	Married with Children
	Married with Children
	Single mother head of household
	Single mother head of household
	Single mother head of household
	Single
	Single
	single
	part time (student)
part time (student)	