A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE .....June 19, 2015

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

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

FUTURE MEETING DATES ..... 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*

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Finance Commission Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.

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FINANCE COMMISSION AGENDA

Friday, June 19, 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, A6, and D2.

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 April 17, 2015, Finance Commission Meeting***

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

   A. Discussion and Possible Vote to Recommend that the Finance Commission Take Action on the Revisions to the Investment Policy for:

      1. Department of Savings and Mortgage Lending
      2. Office of Consumer Credit Commissioner
      3. Texas Department of Banking

   B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Banking's 2015 Annual Internal Audit Report including the Audit of the Revenue Accounting Process as Prepared and Presented by Garza/Gonzalez and Associates

   C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Extend the Internal Auditor Contract for Garza/Gonzalez & Associates through Fiscal Year 2016

6. ***Discussion of and Possible Vote to Take Action on Re-Adoption of the Completed Rule Reviews of:***

A. ***7 TAC, Part 1, Chapter 9, Concerning Procedures for Contested Case Hearings, Appeals and Rulemakings***

B. ***7 TAC, Part 1, Chapter 10, Concerning Contract Procedures***

7. Discussion of and Possible Vote to Take 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

8. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property

9. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation

B. TEXAS 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; and c) Other Items

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

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

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

C. 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. The Finance Commission Will Enter into Executive Session Pursuant to §552.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from its attorneys, with respect to:

   Ovation Lending LLC, Alamo Home Finance Inc., USPTL LLC, and Tax Advances LLC v. Finance Commission of Texas, Office of Consumer Credit Commissioner, and Leslie Pettijohn in her Official Capacity as Commissioner of the Office of Consumer Credit Commission; Cause No. D-1-GN-15-000886, now pending in the District Court of Travis County, Texas, 353rd Judicial District

3. Discussion and Possible Vote to Take Action with Respect to Agenda Item C2

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

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC §2.106, Concerning Denial, Suspension, or Revocation Based on Criminal History, for OCCC Residential Mortgage Loan Originators

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC §88.102 and §88.107, and New 7 TAC §88.110, Concerning Criminal History Information, for Debt Management Services Providers

7. Discussion of and Possible Vote to Take 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. 15-50168, in the United States Court of Appeals for the Fifth Circuit

D. 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 Re-adoption of the Completed Rule Reviews of:***

   A. ***7 TAC, Part 2, Chapter 12, Concerning Loans and Investments***

   B. ***7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Benefit Contracts***

3. 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, C*ause No. D-1-GN-14-000367, In the 261st 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.

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

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

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MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, April 17, 2015
9:00 a.m.

The Finance Commission of Texas convened at 9:00 a.m. on April 17, 2015, with the following members present: Bill White, Chairman, Paul Plunket, Vice Chair, Susan Burton, Victor Leal, Stacy London, Lori McCool, Will Lucas, Jonathan Newton, Larry Patton, and Jay Shands. Absent was Cindy Lyons.

Chairman White announced that there was a quorum of the Finance Commission of Texas with 10 members present. *(.17 on audio file)*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the February 20, 2015, Finance Commission Meeting	**On Consent Agenda – Item A1** This item approved on the Consent Agenda.	17.05
2. General Public Comment	No Action Required	18.04
3. Consent Agenda **- Items A1, C2, C3 and C4**	Jay Shands made a motion to approve the Consent Agenda. Will Lucas seconded and the motion passed.	17.05 start of discussion 18.27 vote
4. Finance Commission Operations	No Action Required	.43
5. Audit Committee Report		18.58
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 28 2015, Investment Officer Reports	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	19.38
B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2015 Second Quarter Financial Statements	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	19.55
C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Banking 2015 Audit of the Perpetual Care Cemetery Area as Prepared and Presented by Garza/Gonzalez and Associates	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	20.14

6. Discussion of and Possible Vote to Take Action on the Finance Commission Agency Heads' Fiscal Year 2015 Mid-Term Accomplishment Reports	Victor Leal made a motion to approve the Finance Commission agency heads' fiscal year 2015 mid-term accomplishment reports. Susan Burton seconded and the motion passed.	21.09 start of discussion 34.15 vote
7. Discussion of the Report of the Financial Condition of the State Banking System (bound separately from packet)	Stacy London made a motion to approve the Report of the Financial Condition of the State Banking System. Larry Patton seconded and the motion passed.	34.45 start of discussion 52.05 vote
8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties 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	Deferred to Executive Session – no vote taken	52.25
9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken	52.25
10. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken	52.25
B. OFFICE OF CONSUMER CREDIT COMMISSIONER		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required	52.32

2. **The Finance Commission Will Enter into Executive Session Pursuant** to §552.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from its attorneys, with respect to:	Chairman White called for a recess at 10:09 a.m. Upon return from recess the Finance Commission entered into Executive Session. Chairman White reconvened the meeting at 11:02 a.m.	1.08.57 1.10.03
3. Discussion and Possible Vote to Take Action with Respect to Agenda Item B2	No Discussion - No Action Required	n/a
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §§89.207, 89.601 and 89.802, Concerning Property Tax Lenders	Paul Plunkett made a motion to approve the amendments to the rules. Victor Leal seconded and the motion passed.	1.11.39 start of discussion 1.16.20 vote
5. Discussion of and Possible Vote to Take Action Regarding Anticipated and Pending Litigation	No Discussion - No Action Required	n/a
C. 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	No Action Required	1.17.12 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §3.91, Concerning Loan Production Offices	**On Consent Agenda – Item C2** This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §3.23 Concerning Exercise of Trust Powers	**On Consent Agenda – Item C3** This item approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §33.52 Concerning How to Provide Information to Customers about Filing a Complaint	**On Consent Agenda – Item C4** This item approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required	n/a

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Recap of Problem Institutions/Enforcement Issues; and d) Other Items	No Action Required	1.29.37
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	No Action Required	1.32.02
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity	No Action Required	1.38.02
4. Discussion of and Possible Action Regarding Anticipated and Pending Litigation	No Discussion – No Action Required	n/a

Chairman Bill White called for an Executive Session at 11:32 a.m. *(1.38.30 on audio file)*. The open meeting resumed at 11:53 a.m. *(1.39.09 on audio file).*

There being no further business, Chairman Bill White adjourned the meeting of the Finance Commission at 11:53 a.m. *(1.39.29 on audio file).*

_____
William J. White, Chairman
Finance Commission of Texas

_____
Charles G. Cooper, Executive Director
Finance Commission of Texas

_____
Brenda J. Medina, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

June 19, 2015

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 17, 2015, Finance Commission Meeting

6. Discussion of and Possible Vote to Take Action on Re-Adoption of the Completed Rule Reviews of:

   A. 7 TAC, Part 1, Chapter 9, Concerning Procedures for Contested Case Hearings, Appeals and Rulemakings

   B. 7 TAC, Part 1, Chapter 10, Concerning Contract Procedures

D. Department of Banking

2. Discussion of and Possible Vote to Take Action on the Re-adoption of the Completed Rule Reviews of:

   A. 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments

   B. 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Benefit Contracts

Future Rule Schedule

Rules	Short Title/Purpose	Projected Rule Proposal Date for Presentation to Finance Commission	Agency
1. 7 TAC §80.201	**Required Disclosures** ***Proposed Amendments*** Adding clarifying language to rule	8/21/2015	SML
2. 7 TAC §80.203	**Advertising** ***Proposed Amendments*** Adding clarification to the advertising requirements	8/21/2015	SML
3. 7 TAC §80.204	**Books and Records** ***Proposed Amendments*** Update rule to reflect changes to federal statutes	8/21/2015	SML
4. 7 TAC §81.200	**Required Disclosures** ***Proposed Amendments*** Adding clarifying language to rule	8/21/2015	SML
5. 7 TAC §81.201	**Loan Status Form** ***Proposed Amendments*** Update graphic to reflect current statutory reference	8/21/2015	SML
6. 7 TAC §81.204	**Books and Records** ***Proposed Amendments*** Update rule to reflect changes to federal statutes	8/21/2015	SML
7. 7 TAC §3.36, §3.37, and §3.38	**Assessments on State Banks** ***Proposed Amendments*** Adjust assessments to meet increased funding needs	8/21/2015	DOB
8. 7 TAC §21.43	**Notice Requirements for Representative Trust Offices** ***New Rule*** Provide mechanism for recognizing trust offices of federally insured banks	8/21/2015	DOB

9. 7 TAC §33.4	**Payment Processors** ***New Rule*** Clarify situations where licensure is not required	8/21/2015	DOB
10. 7 TAC §9.12	**Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings** ***Proposed Amendments*** To clarify that the finance agencies may informally dispose of contested cases by default	8/21/2015	FC Agencies
11. 7 TAC §82.5	**Administration** ***Proposed New*** To clarify the notice requirements for a contested case hearing and allow the OCCC to informally dispose of contested cases by default	8/21/2015	OCCC
12. 7 TAC, Chapters 84 and 90	**Plain Language Contracts** ***Proposed Amendments*** To update plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes	8/21/2015	OCCC
13. 7 TAC, Chapter 90	**Chapter 342, Plain Language Contract Provisions** ***Rule Review*** To conduct standard 4-year review, update plain language contracts to conform with federal TILA-RESPA forms, provide provisions for irregular transactions, and make technical corrections	8/21/2015	OCCC
14. 7 TAC, Chapter 15	**Corporate Activities** ***Rule Review***	10/16/2015	DOB
15. 7 TAC, Chapter 17	**Trust Company Regulation** ***Rule Review***	10/16/2015	DOB
16. 7 TAC, Chapter 19	**Trust Company Loans and Investments** ***Rule Review***	10/16/2015	DOB
17. 7 TAC, Chapter 21	**Trust Company Corporate Activities** ***Rule Review***	10/16/2015	DOB
18. 7 TAC, Chapter 83, Subchapter B	**Rules for Credit Access Businesses** ***Rule Review*** To conduct standard 4-year review, provide definitions, streamline licensing provisions, specify recordkeeping and examination requirements, update disclosure forms, and make technical corrections	10/16/2015	OCCC

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Legislation Influencing General Agency Policies
84th Legislative Session, 2015

HB 9 – Employee Retirement System funding (effective 9/1/15 unless vetoed)

- Increases the employee contribution to 9.5% (up from 7.5%)
- Eliminates 90-day waiting period for new employees to join ERS
- Note that this bill was passed in conjunction with an amendment to the Appropriations Act, which increases employee compensation in an amount to offset the increased contribution

HB 15 – Management and oversight of state contracts (effective 9/1/15 unless vetoed)

- Increases from $14,000 to $50,000 the threshold for certain contracts that must be reported to LBB
- Establishes contract management and oversight team to monitor state contract activity
- Requires agencies to notify LBB prior to issuing RFP for high risk contract, and to implement LBB's recommendations for mitigation of risk

HB 685 – Public information requests (effective 9/1/15 unless vetoed)

- Allows agencies to provide a URL address in response to public information requests
- Allows agencies to withhold information that is prohibited from being disclosed without requesting an AG opinion
- See also HB 2134 (effective 9/1/15 unless vetoed), which facilitates email communication to requestors

HB 763 – Petition for state agency rulemaking (effective upon signature unless vetoed)

- Requires at least 51% of signatures on a petition to be from state residents

HB 786 – State employee breastfeeding policy (effective 9/1/15 unless vetoed)

- Requires agencies to adopt a written policy on the expression of breast milk in the work place, and to provide reasonable accommodation and break time for employees to express breast milk

HB 855 – State agency website browser compatibility (effective 9/1/15 unless vetoed)

- Requires agencies to identify and list on the website the three most commonly used internet browsers
- Requires agency website to be compatible with a wireless communication device and the three most commonly used browsers

HB 896 – Offense of break of computer security (effective 9/1/15)

- Criminalizes computer security breaches

HB 1295 – State contracting (effective 9/1/15 unless vetoed)

- For contracts (entered into after 1/1/16) that require action or vote by governing body, or for contracts valued at $1 Million or more, requires the agency to submit to the Texas Ethics Commission a list of each interested party in the contract
- Requires institutions of higher education to disclose research sponsors

- Limits agency contracts with institutions of higher education for research

HB 1771 – Donation of sick leave (effective 9/1/15 unless vetoed)

- Allows a state employee to donate accumulated sick leave to a fellow employee

HB 1832 – Continuity of operation plans (effective upon signature unless vetoed)

- Makes confidential continuity of operation plans submitted to the State Office of Risk Management

HB 1890 – Legacy system modernization strategy (effective upon signature unless vetoed)

- Requires the Department of Information Resources (DIR) to develop a plan to modernize obsolete inefficient hardware and software
- Establishes a pilot program for shared data reporting and business analytics
- Requires state agencies to identify information security issues and develop a plan to prioritize remediation

HB 1912 – Department of Information Resources (effective 9/1/15 unless vetoed)

- Establishes statewide data coordinator to reduce duplication and waste

HB 3337 – Agency training (effective 9/1/15 unless vetoed)

- Restricts reimbursement for training to courses successfully completed by accredited institutions of higher education
- Requires employee tuition reimbursement to be approved by agency executive head
- Requires agencies to establish clear guidelines for tuition reimbursement and post policies on employment section of website

HB 3736 – Conflicts of interest (effective 9/1/15 unless vetoed)

- Expands the scope of property held by and contracts entered into by a state officer that must be reported to the Texas Ethics Commission
- Prohibits members of agency governing boards from participate in decisions where there is a conflict of interest whereby the decision would result in a pecuniary gain to the member
- Requires members of governing boards to disclose in writing any such conflict

SB 20 – State contracting (effective 9/1/15)

- Requires the State comptroller to conduct a study on consolidation of state purchasing functions
- Requires agencies to retain all records concerning contracts for seven years after expiration of the contract
- Prohibits former agency employees who participated in procurement process from becoming employed at the same contractor for two years
- Requires reporting of contracts and purchasing information to the comptroller in accordance with rules
- Requires documentation of best value standard used to award contracts
- Permits the Texas Facilities Commission or the comptroller to bar vendors from participation in state contracts for poor performance

- Requires procurement staff to receive ethics training
- Tightens requirements for contracts involving purchase of computers
- Requires agencies to use comptroller's vendor performance tracking system in awarding contracts

SB 273 – Concealed carry (effective 9/1/15 unless vetoed)

- Prohibits state agencies from stating that a holder of a concealed handgun licenses (CHL) may not carry a handgun on the premises
- Prohibits CHL licensees from carrying handguns in an open government meeting

SB 374 – Verification of employee information (effective 9/1/15 unless vetoed)

- Requires state agencies to use the federal electronic verification of employment authorization program (E-verify)
- Authorizes the Texas Workforce Commission to adopt rules to implement the law

SB 389 – Placement of military occupational specialty codes (effective 9/1/15)

- Requires agencies to include applicable military occupational codes on notices of job openings

SB 805 – Veterans' employment preference (effective 9/1/15)

- Clarifies agency requirements for preference of hiring veterans
- Requires agencies to set goal of filling 20% of full-time positions with veterans

SB 1032 – Alternative work sites for state employees (effective 9/1/15 unless vetoed)

- Allows state employees to earn comp time and overtime at alternative work sites
- Permits agencies to establish policies and guidelines for alternative work sites
- Requires DIR to compile and submit an annual report concerning alternative work sites

SB 1105 – Inspections by state fire marshal (effective upon signature unless vetoed)

- Establishes the state fire marshal as having authority and jurisdiction over fire safety of state-owned buildings

SB 1267 – Modernization of Administrative Procedures Act (APA) (effective 9/1/15 unless vetoed)

- Clarifies the required disclosures in notices of hearing and requires amendments to be files not later than seven days before hearing
- In summary license revocation proceedings, requires the agency to find imminent peril to public health, safety or welfare, and requires opportunity for hearing to contest summary revocation not later than 30 days following summary revocation
- Requires an authorized person to sign agency orders that may become final
- Specifies requirements for notifying parties of orders that may become final, and provides remedies for parties whose interests are adversely affected by agencies that fail to provide or maintain proof of proper notice

- Extends the deadlines for filing motions for rehearing, replies to such motions, and decisions following
- Specifies requirements for motions for rehearing

SB 1307 – Occupational licenses for veterans (effective 9/1/15 unless vetoed)

- Provides additional time for active duty military to meet licensing renewal requirements
- Requires agencies that issue licenses to adopt rules for issuance of licenses to service members, veterans, and military spouses, including alternative methods for meeting license requirements; requires such agencies to post these rules on the agency website

SB 1877 – State employee data use agreements (effective 9/1/15 unless vetoed)

- Requires agencies to develop data use agreements, and to update the agreements at least biennially
- Requires employees who handle sensitive information sign data use agreements and updates
- Requires agencies to provide cybersecurity awareness training

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), specifically Subchapter A (General) comprised of §§9.1 - 9.3; Subchapter B (Contested Case Hearings) comprised of §§9.11-9.23 and 9.25-9.39; Subchapter C (Appeals to Finance Commission) comprised of §§9.51 - 9.52 and 9.54-9.57; Subchapter D (Court Appeals) comprised of §§9.71 and 9.72; and Subchapter E (Rulemaking) comprised of §§9.81 - 9.84.

Notice of the review of Chapter 9 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2423). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking).

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 10 (Contract Procedures), specifically Subchapter A (Negotiation and Mediation) comprised of §§10.1 - 10.21; and Subchapter B (Contract Protests) comprised of §10.30.

Notice of the review of Chapter 10 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2424). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 7, Chapter 10 (Contract Procedures).

B.

Texas Department of Savings and Mortgage Lending

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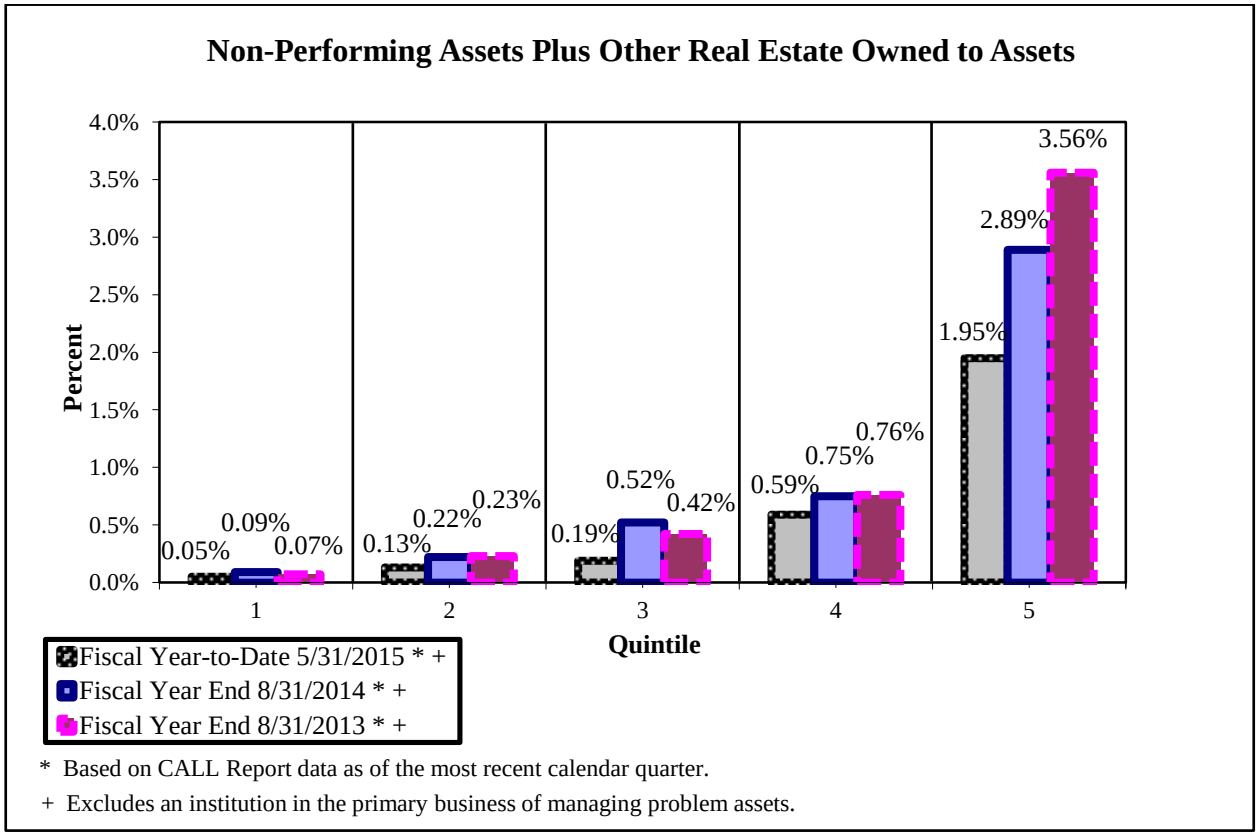
B. Department of Savings and Mortgage Lending

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

a. Industry Status

State-chartered savings bank assets under the Department's jurisdiction totaled $11.6 billion as of March 31, 2015, which is 11.5% greater than the asset size of the industry one year prior. The total number of state savings banks remains 27.

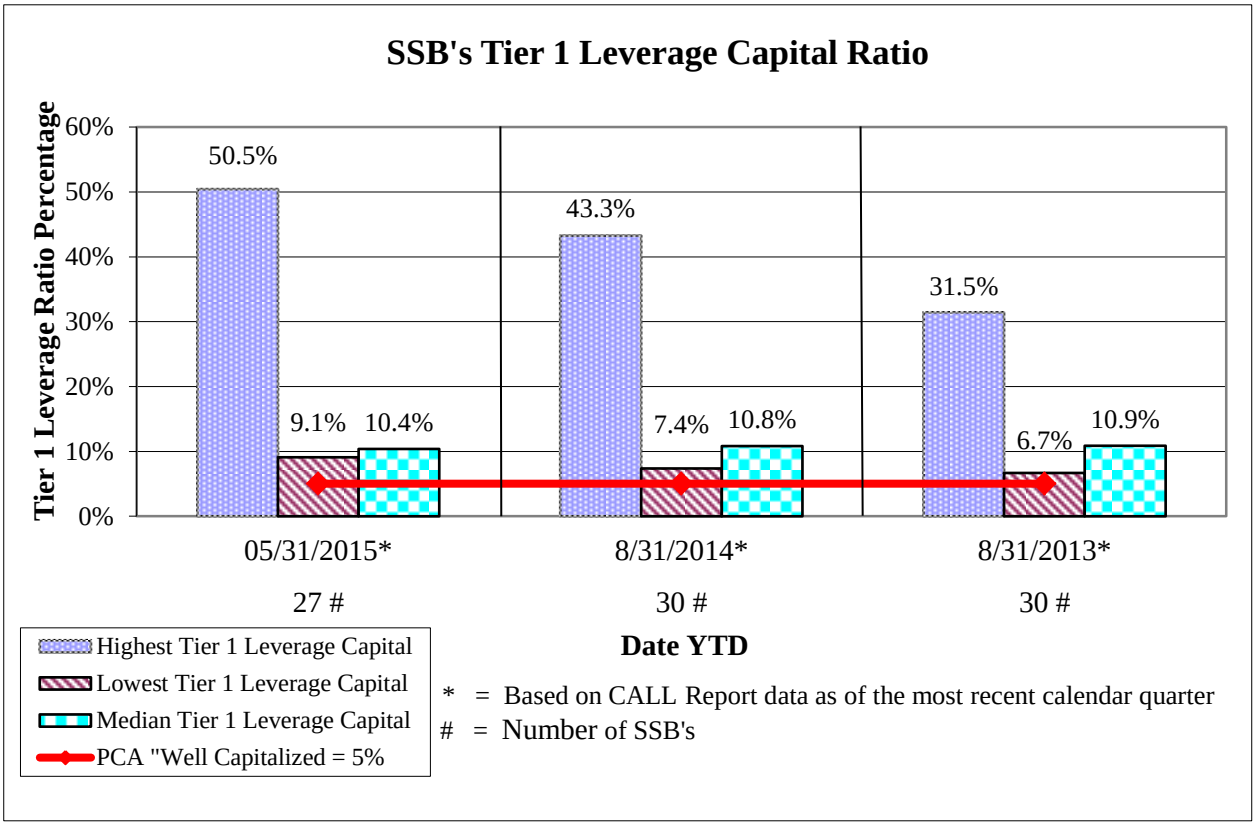
The annualized return on average assets for savings banks slightly improved in the first quarter of calendar year 2015. Increased profitability occurred in 56% of savings banks in this period. There are no unprofitable savings banks. The median net interest margin remains relatively narrow at 3.96% as a result of relatively low asset yields. Nonperforming assets in state-chartered savings banks continues to decline, with a low median of 0.2% percentage of total assets and 2.0% of total equity capital plus the allowance for loan and lease losses.



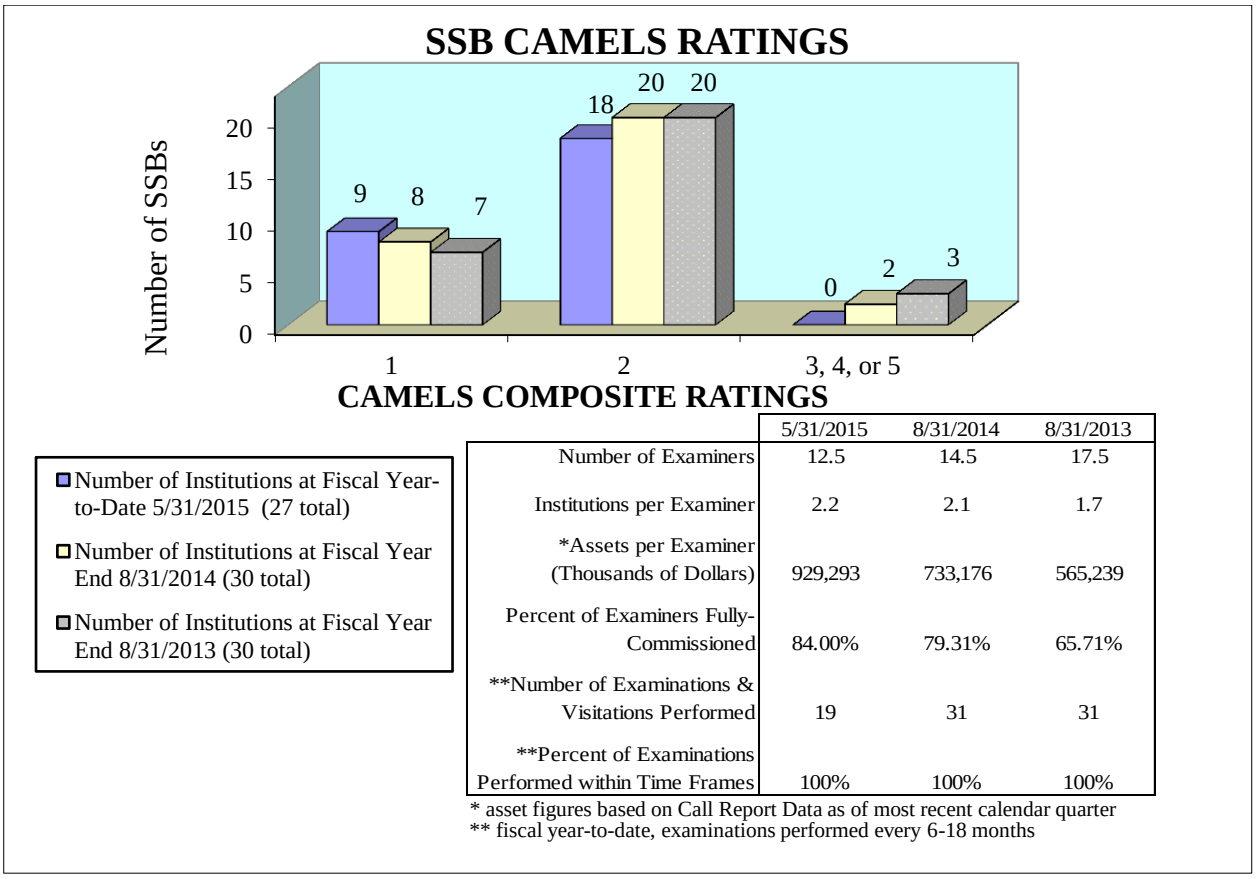
* Based on CALL Report data as of the most recent calendar quarter.

\+ Excludes an institution in the primary business of managing problem assets.

State savings banks capital levels remain strong as represented by a median 10.4% Tier 1 Leverage Ratio. Quarterly growth in equity came through $55.7 million in net income, $37.0 in changes incident to business combinations, $5.2 million in other comprehensive income (such as unrealized gains on investments), $2.4 million in parent company injections, and $2.1 million in stock sales; offset slightly by $3.1 million in dividends.



All state savings banks are currently rated a composite 1 or 2.



	5/31/2015	8/31/2014	8/31/2013
Number of Examiners	12.5	14.5	17.5
Institutions per Examiner	2.2	2.1	1.7
*Assets per Examiner (Thousands of Dollars)	929,293	733,176	565,239
Percent of Examiners Fully-Commissioned	84.00%	79.31%	65.71%
**Number of Examinations & Visitations Performed	19	31	31
**Percent of Examinations Performed within Time Frames	100%	100%	100%

* asset figures based on Call Report Data as of most recent calendar quarter
** fiscal year-to-date, examinations performed every 6-18 months

b. Savings Bank Charter and Merger Activity

On May 19, 2015, an application was received for Industry State Bank, Industry, TX, to acquire certain assets and liabilities of the Columbus, TX, branch of Fayette Savings Bank, SSB, La Grange, TX. The application is currently under review.

On May 26, 2015, an application was received for Triumph Community Bank, NA, Moline, IL, to merge with and into its sister bank, Triumph Savings Bank, SSB, Dallas, TX with the resulting bank being Triumph Savings Bank, SSB. The application is currently under review.

c. Other Items

- Commissioner Jones and Chief Thrift Supervisory Analyst Jonathan Finley attended Texas Bankers Association Annual Convention.
- Commissioner Jones chaired the April meeting of the ACSSS Board via conference call. Speaker was Mr. Patrick Kennedy, managing partner of Kennedy & Sutherland, San Antonio. Topic was Sub S Banks.
- On behalf of the ACSSS, Commissioner Jones participated in the FBIIC's Senior Leaders' Council meeting.
- Commissioner Jones participated in the Regulatory Panel presentation at the Texas Bankers Association Legal Conference.
- Commissioner Jones and Chief Supervisory Analyst Finley attended the Texas Bankers Association Annual Convention.
- Internal Thrift Examiner training is scheduled for June 22 and 23.

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

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 05/31/2015	Approved		
	Company (MU1)	Branch (MU3)	MLO (MU4)
Auxiliary	7	n/a	
CUSO	3	2	
FSC	1	n/a	
Independent Contractor	68	n/a	
Mortgage Company	1,014	383	
Mortgage Banker	370	1,965	
Mortgage Servicer	147	n/a	
Totals	**1,610**	**2,350**	**18,244**

Through the 3rd quarter of FY15, the Department received 5,599 new license requests and 49,793 other filing (amendments, sponsorships, etc.) Since January 2015, the Department has received, on average, over 640 new license requests per month.

b. Mortgage Examinations

During the first three quarters of FY15, a total of 297 full scope examinations were conducted covering 6,573 mortgage loan originators. The examinations are continuing to identify incomplete conditional qualification / approval letters along with other compliance issues.

In April, the Department sent seven mortgage examiners to an AARMR / CSBS Training School which focused on new CFPB TILA RESPA Integrated Disclosures. In-house mortgage examiner training is scheduled to be held in Austin on June 25th and 26th.

c. Consumer Complaints/Legal Issues

During the first three quarters of FY15, a total of 667 consumer complaints were received. This represents a 6% decrease when compared to the same period in FY14. Loan servicing complaints represent 60% of the total number of complaints received so far during FY15. As of May 31, 2015, there were a total of 125 open consumer complaints with 96% of the complaints aged less than 90 days. No complaints were aged over 180 days at the end of the quarter.

Enforcement Activity: During the period of April 01, 2015 through May 31, 2015, the Department reports the following Enforcement Activity:

Disciplinary Cases
Notices of Hearings Issued: 5
Hearings Held: 9
Final Orders as a Result of a Hearing: 3
Orders to Cease and Desist: 6
Orders to Take Affirmative Action: 16
Agreed Orders to Cease and Desist: 0
Agreed Orders to Take Affirmative Action: 5
Orders of Suspension: 0
Agreed Orders of Suspension: 0
Orders Lifting Suspension: 0
Final Orders Revoking License: 0
Formal Advisory Letters: 26
Other Orders
- Amended Orders to Cease and Desist: 0
- Amended Orders to Take Affirmative Action: 1
- Orders Rescinding Prior Order: 10
- Orders of Dismissal: 7

Appeals of License Denials
Notices of Hearings Issued: 3
Appeals Received: 2
Hearings Held: 1
Final Orders as a Result of a Hearing: 2
Dismissal Orders: 2
Agreed Orders: 0

Non-Sufficient Funds (NSF)
Letters Issued: 0

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

d. Other Items

- Director of Mortgage Examinations, Tony Florence spoke at the Texas Real Estate Teachers Association April meeting.
- Commissioner Jones and Director of Licensing Steven O'Shields attended the Texas Mortgage Bankers Association Annual Convention.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is in the process of closing out the third quarter of FY15 and building the budget for FY16.

Audits –Garza/Gonzales conducted the internal audit related to Mortgage Examination area. The report will be presented at the August meeting.

Legislative Session – Staff members are reviewing bills passed in the 84th Legislative Session to evaluate any fiscal impact on the agency, staff, and regulated industries, and to determine any implementing rules that are necessary.

b. Staffing

As of June 1, 2015, the agency was staffed at 55 regular full time employees and 1 regular part-time employee with 64 FTEs available.

The Department's vacant positions are in different stages of the hiring process.

c. Other Items

Agency wide training is scheduled for June 24th in Austin and will include presentations by Human Resources and IT as well as external speakers.

d. Legislative Activity

84th Legislative Session

Bills of Interest

HB831 – Surviving spouse home mortgage information disclosure (effective 9/1/15 unless vetoed)

- Requires mortgage servicers to provide a surviving spouse, within 30 days of request, information concerning outstanding mortgage loan

HB1626 – Designation of certain banking development districts (effective 9/1/15 unless vetoed)

- Finance Commission will administer and monitor the program and has rulemaking authority
- Banking development districts may include state or national banks, state or federal savings banks, or state or federal savings and loan association, and state or federal credit unions
- Provides for local government or the state comptroller the ability to designate a financial institution to be a banking district depository

HB1628 – Savings promotion raffle (effective 9/1/15 unless vetoed)

- Provides financial institutions the ability to offer a chance to win a prize for certain qualifying depositors

HB3536 – Appointment of commissioner for certain Finance Commission agencies (effective 9/1/15 unless vetoed)

- Provides that Department of Banking and Savings & Mortgage Lending commissioners are appointed by a majority vote of Finance Commission members

SB1203 – Exemption to the Texas SAFE Act (effective 9/1/15)

- Provided exemption from licensing certain non-profit entities

C.

Office of Consumer Credit Commissioner

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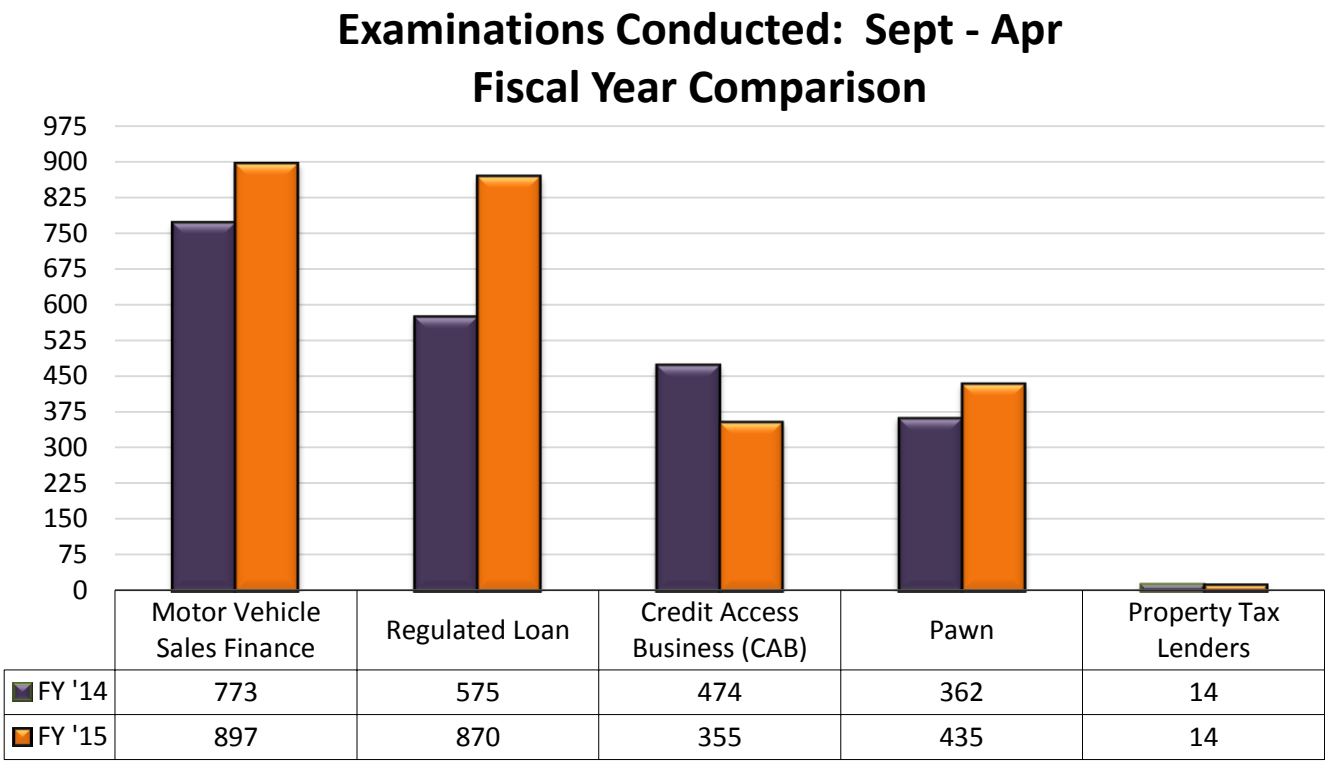
Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

The number of Motor Vehicle Sales Finance (MVSF), Regulated Loans, and Pawn examinations conducted in Fiscal Year 2015 (FY '15) is above those conducted over the same time period in Fiscal Year 2014 (FY '14). Property Tax Lender examinations are now at the same level as this time period in FY '14, while Credit Access Business (CAB) examinations are slightly behind for the same time period in FY '14. The number of CAB examinations conducted is increasing weekly, as scheduling efforts have intensified on this area. Comparison of examinations conducted from September – April FY '14 and FY '15 are noted in the following chart.



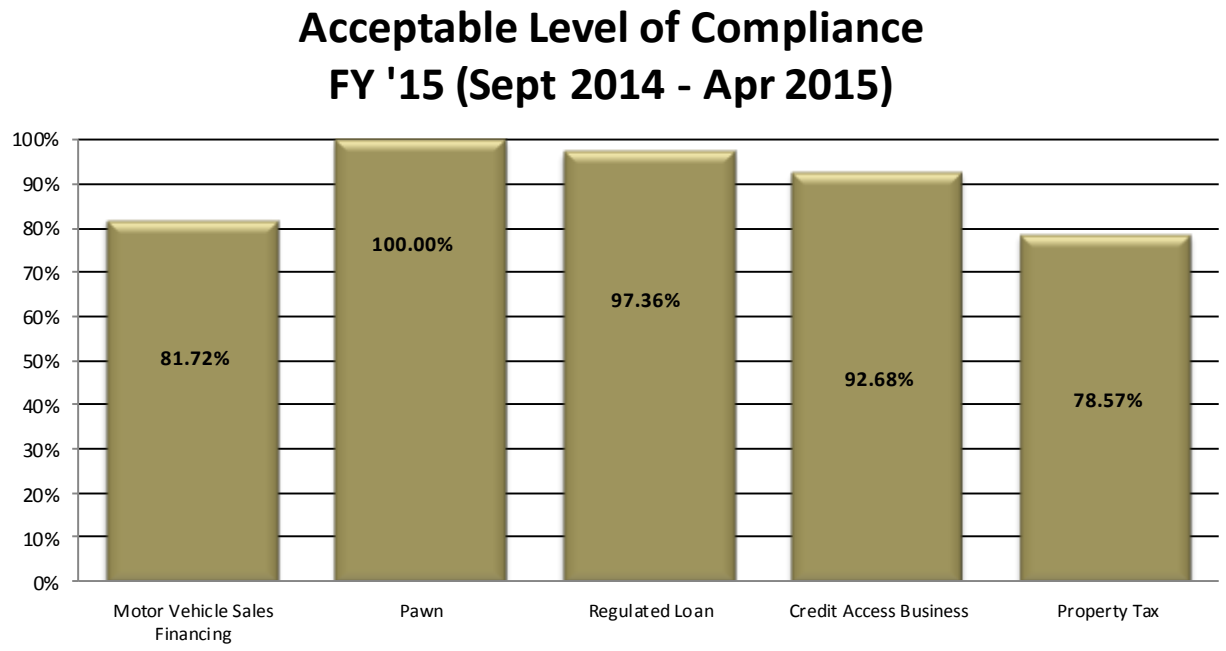
One of the agency's Houston examiners, Dallas Teston, resigned effective May 15, 2015. Interviews are currently being conducted for this position as well as the other vacant Houston examiner position. Interviews for the Investigator I position in Consumer Assistance are ongoing. Carrie Trigg was selected to fill the administrative assistant position in the Examination Section, effective May 20, 2015.

Huffman Lewis, Coordinator for out-of-state examinations, made a presentation at the Texas Department of Motor Vehicles (TxDMV) dealer training seminar on April 15 – 16, 2015, in Houston. He made a similar presentation at the TxDMV seminar in El Paso on May 21, 2015. William Purce, Senior Review Examiner from the Austin staff made a presentation to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs on May 12, 2015, in Austin.

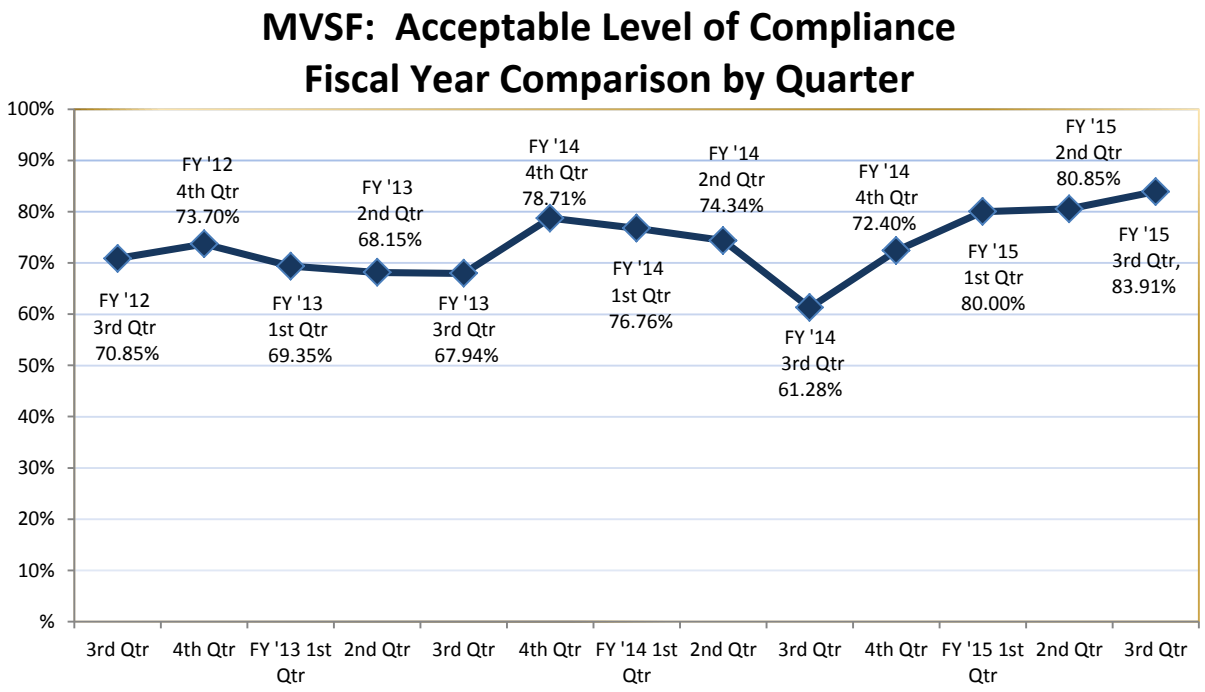
Three senior examiners attended the American Association of Residential Mortgage Regulators 2015 Spring Training School: CFPB Combined TILA/RESPA Disclosures held April 27 – May 1, 2015, in Chicago, Illinois.

Pawnbroker "Loaning with Integrity" training was conducted by a company with several pawnshops in the area, in cooperation with the San Antonio Police Department, on May 19 – 20, 2015, and May 26 – 27, 2015. Six San Antonio region examiners attended this training on alternate days and provided resource information for the agency.

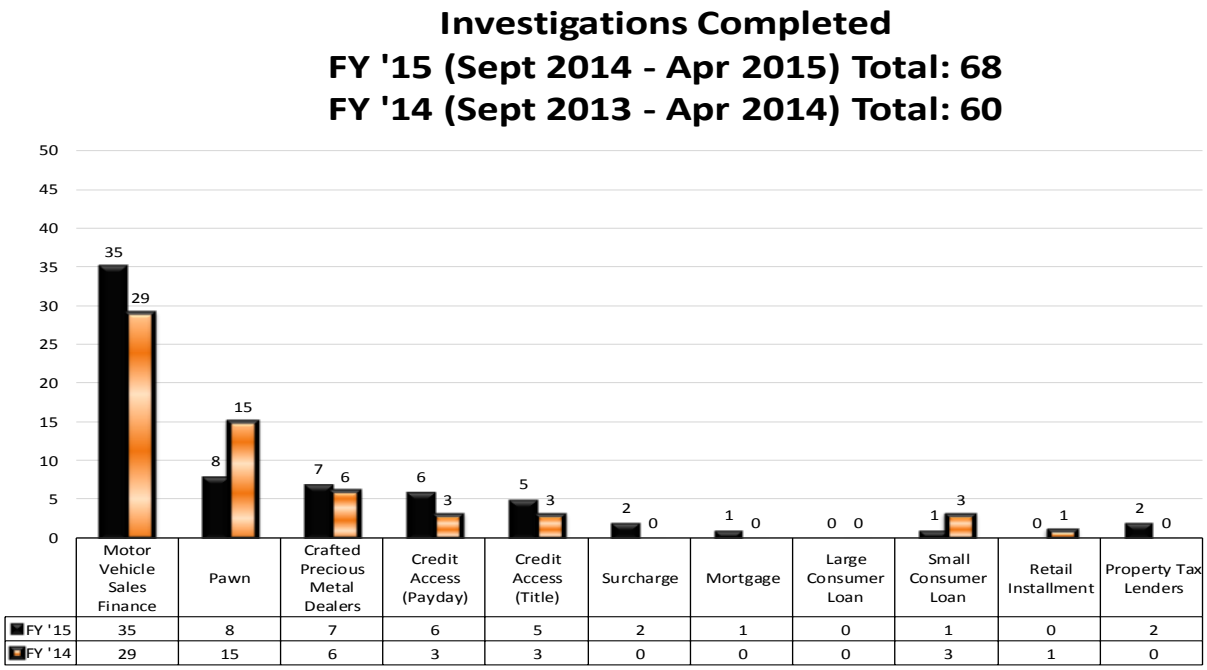
The current acceptable level of compliance in the five examination areas is noted in the chart below. Acceptable level of compliance of both CAB and Pawn examinations for FY '15 is comparable to the acceptable level of compliance for the same time period in FY '14. The FY '15 acceptable level of compliance for Regulated Loan and MVSF notes improvement from that for FY '14 for the same time period. The acceptable level of compliance for Property Tax Lenders was 92.86% for FY '14, with 13 of 14 exams at acceptable levels, and is 78.57% for FY '15, with 11 of 14 exams at acceptable levels.



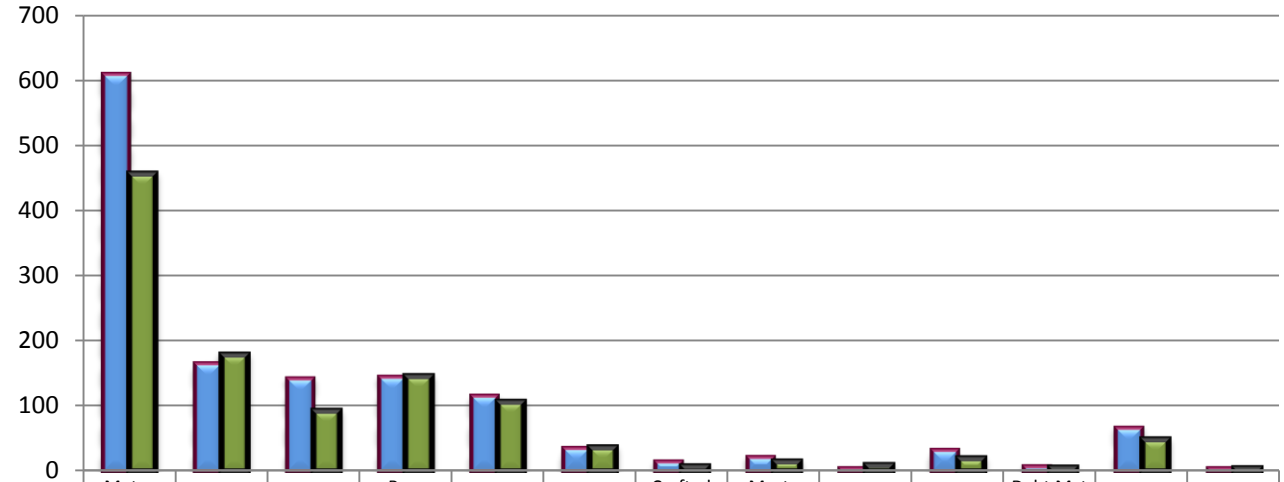
A rolling three year comparison of MVSF compliance rates by quarter is noted on the chart that follows.



Investigations



Complaints Processed
FY '15 (Sept 2014-Apr 2015) Total: 1, 371
FY '14 (Sept 2013-Apr 2014) Total: 1, 132



	Motor Vehicle Sales Finance	CAB Payday Loans	CAB Auto Title Loans	Reg. Lenders Non-Real Estate	Pawn	Revolving Loans	Crafted Precious Metals Dealers	Mortg Lenders: Real Estate	Mnufct. Hsng	Property Tax Lenders	Debt Mgt Debt Settlement	Surcharge (Credit Card Use)	All Others
FY' 15	610	166	143	145	116	36	15	22	5	33	8	67	5
FY' 14	457	179	93	146	107	37	8	15	10	20	6	49	5

For this reporting period in FY '15, the top four areas of complaints were 1) MVSF, 2) CAB, 3) Regulated Lenders Non-Real Estate, and 4) Pawn.

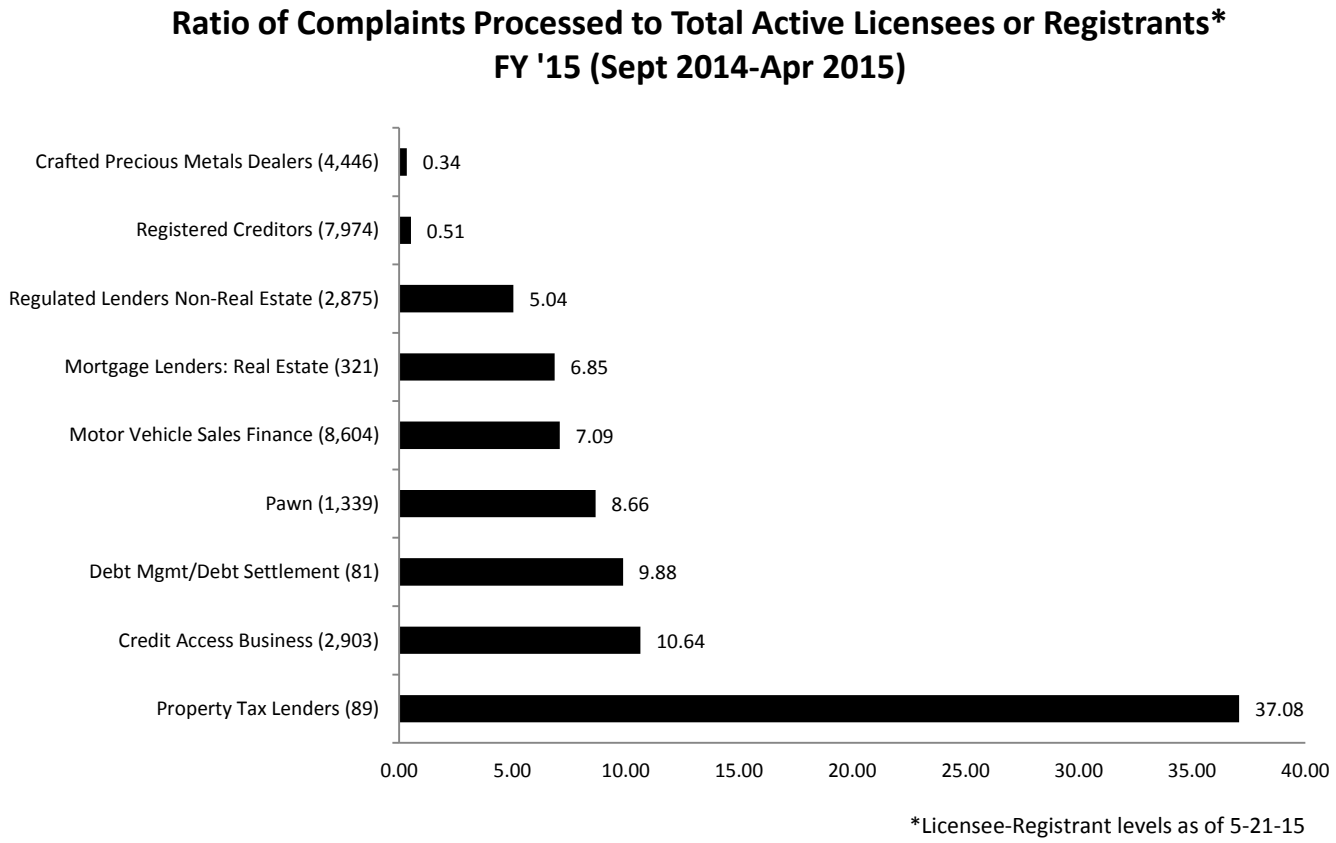
MVSF complaints continue to be the largest complaint category. This percentage has remained fairly constant for the current reporting period (44.49%) as well as for the previous two reporting periods for this fiscal year (45.15% and 45.43% respectively). The complaint issues by type are categorized as: repossessions (16%), unlicensed activity (12%), financing conditioned on subsequent assignments (11%), payment postings/dispute of account balances (11%), issues related to ancillary products and insurance (9%), title issues (7%), dispute contracted price and other fees (6%), consumer right of rescission (6%), and mechanical issues (4%).

The second largest category of complaints was CAB complaints (payday 12.11% and title loans 10.43%). CAB payday complaints were predominately: allegations of improper posting of payments-ACH and dispute of account balances (27%), continued attempts to collect debt not owed: debt is not mine (16%), fee amounts being charged (13%), consumers alleging financial hardship and seeking assistance (10%), and, collection practices (7%). CAB title loan complaints by type for this reporting period were primarily: allegations of improper posting of payments and balance owed not decreasing (22%), repossessions (20%), release of titles upon payoff (16%), charges and fees (14%).

Regulated Lenders Non-Real Estate comprised the third largest category of complaints at 10.58%. Issues were predominately related to allegations of abusive collection practices (34%), improper posting of payments (18%), high interest rates (12%), and complaints about fees (8%).

The fourth largest complaint category again was Pawn (8.46%). Issues mainly involved replacement of lost/damaged goods (29%), redeeming of pawned items (18%), forfeiture of goods (11%), pawn service charge (8%), victim assistance in stolen items (6%), monitoring the acceptance of goods (6%), and issues related to purchased goods (5%).

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Property Tax Lender complaints, with CAB complaints ratio being the second highest. Debt Management/Debt Settlement and Pawn ratio of complaints to active licensees or registrants were third and fourth, respectively.



CAB Reporting Update

Reports through FY2014 are currently compiled and published. The 1st quarter FY 2015 submissions were filed on 4/30/2015. A comparison of 1st quarter reports through the years is presented. This year's data indicates the lowest volume of new transactions and store activity for the 1st quarter since data collection began. The current trend is to structure payday loans with longer repayment periods. This is represented by the four year high, 35% of payday loans that are due in an average term of 155 days.

Data Highlights (All Loan Types) Q1 Comparison	2015	2014	2013	2012
Number of new payday loans	494,654	514,981	572,101	565,981
Number of new auto title loans	69,646	89,707	112,060	97,865
Percentage of Payday Loans due in multiple installments	35%	32%	18%	12%
Percentage of Auto Title Loans due in multiple installments	13%	17%	12%	14%
Number of vehicles repossessed under all auto title loans	9,564	10,693	9,615	8,802
Total number of locations reporting activity	2,598	3,078	3,093	3,085

	Single Installment		Multiple Installment	
Payday Loans Q1	2015	2014	2015	2014
Number of consumer obtaining loans	242,563	280,172	158,858	142,579
Number of new loans	320,555	350,762	174,099	164,219
Number of refinances on new loans in the quarter [1]	229,435	298,479	21,571	13,622
Number of total refinances[2]	637,556	883,446	47,294	34,304
Average Loan Amount	$522	$478	$536	$540
Average Fee per $100 borrowed	$23.37	$22.94	$165.23	$147.88
Average original term (in days)	18	19	155	153

	Single Installment		Multiple Installment	
Title Loans Q1	2015	2014	2015	2014
Number of consumer obtaining loans	53,585	66,697	8,938	14,574
Number of new Loans	60,379	74,276	9,267	15,431
Number of refinances on new loans in the quarter [1]	32,768	39,733	1,483	1,875
Number of total refinances[2]	369,051	335,399	6,006	11,727
Average Loan Amount	$1,165	$1,133	$1,142	$1,092
Average Fee per $100 borrowed	$17.95	$19.13	$91.33	$95.49
Average original term (in days)	30	30	162	197

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.

Licensing Report

Renewals

The renewal period for Pawnshops and Pawnshop Employees began May 15, 2015 and expires June 30, 2015. More than half of both pawn employees and pawn shops have renewed online via ALECS and the OCCC hopes to maintain this momentum into Motor Vehicle Sales Finance which begins June 15, 2015. Motor Vehicle Sales Finance licensees received a 20% discount from the maximum assessment rate for renewals this year. Last year's discount was somewhat larger because of the planned use of the agency's fund balance to supplement the assessment for 2014. This year's assessment fee was also impacted by a decrease in the administrative penalties collected in 2015 as compared to 2014 due to an increased compliance rate for the motor vehicle industry, which is a positive trend overall. We are currently working to improve the online renewal system to improve accessibility and ease of use. The agency has seen a reduction in time and cost in processing renewals due to the online submission. Pawnshop annual report forms for 2014 may be submitted via email or mail.

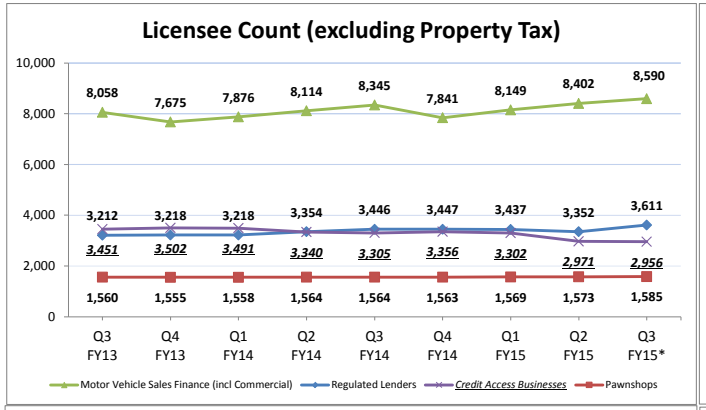
Applications Processing

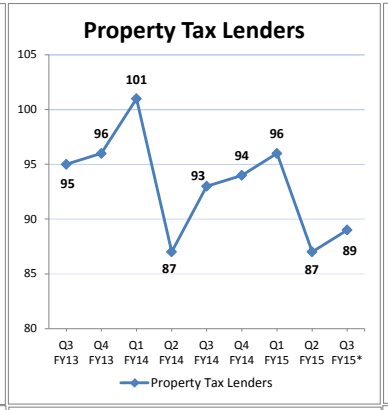
Weekly benchmarks have been established to diminish the volume of all pending applications. The Licensing Department has continued to make positive strides in improving the processing of applications and streamlining procedures. While ambitious, this benchmark minimizes the number of outstanding applications and is flexible. Additionally the average of business applications submitted online via ALECS has risen from 31% in February to approximately 55% at the end of May which will produce efficiency gains.

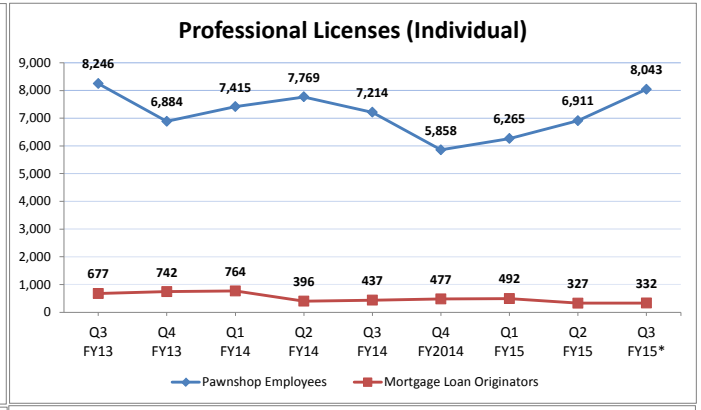
Regulated Entity Population Trends

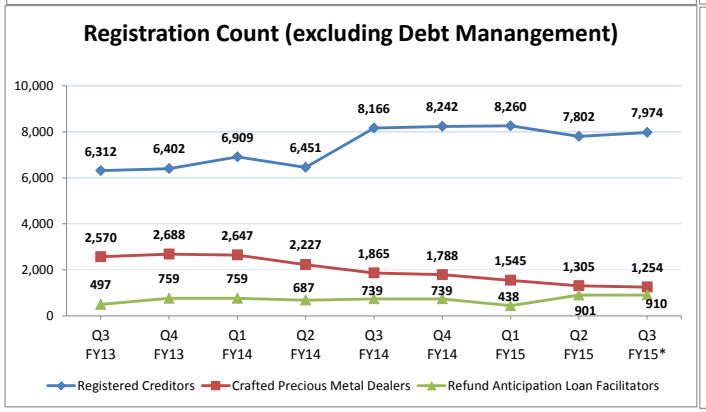
The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2013 and 2014, and the most recent data, as of May 21, 2015.

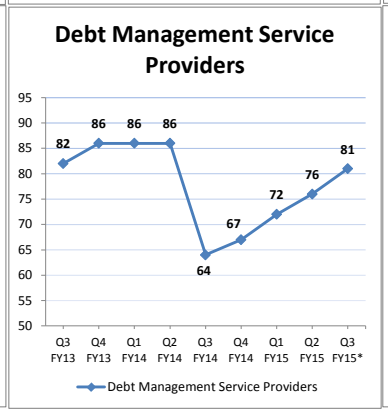
Number of OCCC Regulated Entities
Quarterly Comparison of FY 13 & 14 with Current Data

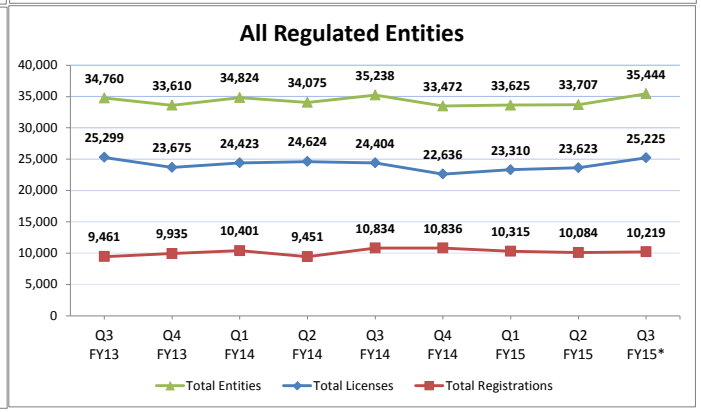












*Data as of May 21, 2015

Communications, Human Resources & Administration Report

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

Stakeholder Engagement and Communication

During the past three months, Commissioner Pettijohn and staff met with numerous legislators, advocacy groups and interested stakeholders to discuss bills of interest to the Office of Consumer Credit Commissioner.

Briefings and written reports to the Governor's staff and members of both legislative bodies were discussed on proposed bills during the 84th Legislative session. This included detailed bill analyses, industry research and proposed legislative changes.

During the fourth quarter, the agency will further identify opportunities to engage stakeholders through other various communication methods.

Human Resources

Since March, the agency has focused on recruitment and selection efforts to ensure qualified applicants for various positions within the OCCC. Strategies used by the agency for posting job vacancy notices and recruiting include through the agency website, Texas Workforce Commission, and career and job boards utilized by institutions of higher education throughout the state.

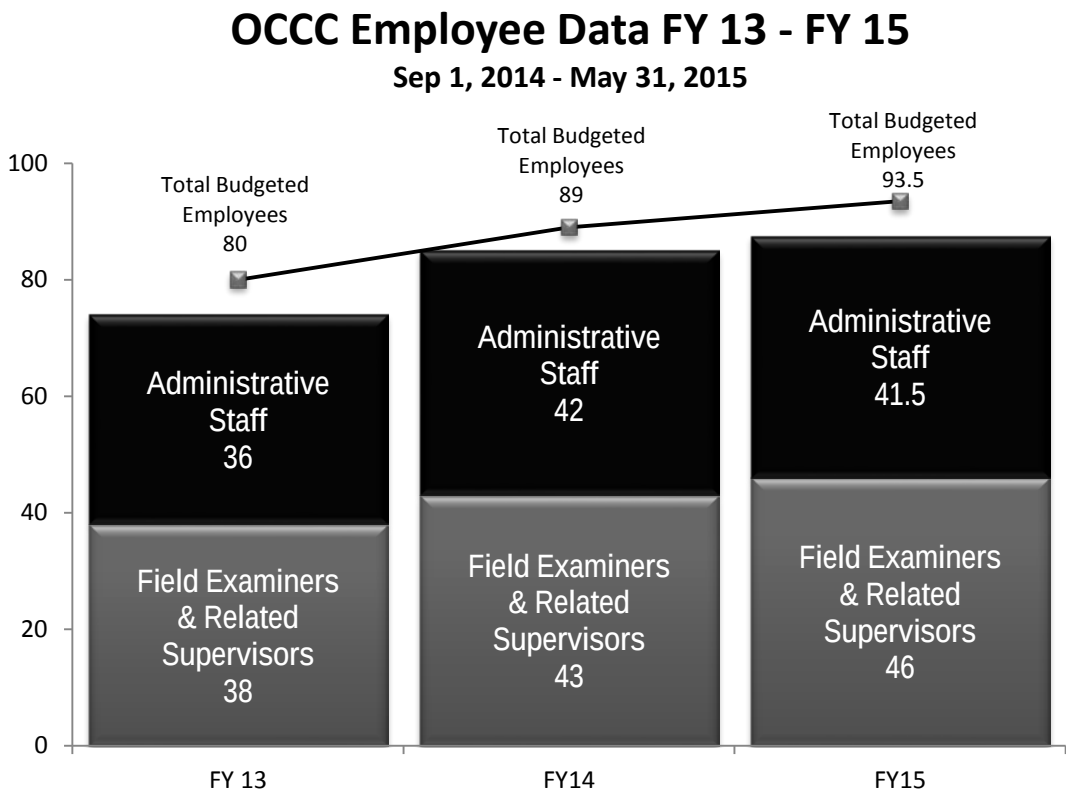
Three promotions were given throughout the agency since March 1st:

- 1 promotion to Investigator II
- 1 promotion to License and Permit Specialist III
- 1 promotion to Attorney V, Deputy General Counsel

The agency has received four resignations over the last quarter: one within the Financial Examiner series, one within the License and Permit Specialist series, and two administrative staff positions. These resignations resulted from employment opportunities with other state agencies. During this time, the agency filled three vacancies previously reported, Acct. Tech. II, Programmer III and Admin. Asst. II. Our current FTE count is 87.5 employees.

Two financial examiner vacancies have been posted and the agency anticipates filling them before the end of the fiscal year. Vacancies within administrative staff positions are actively being recruited and positions are currently filled through the use of contract workers. Our current turnover ratio sits at 13.13%.

FY 15 Vacancies	
Vacancy	**Status**
Financial Examiner – Houston (2 openings)	Active - Interviews in progress
Investigator I	Active – Interviews in progress
License and Permit Specialist II	Active - Interviews in progress
Information Specialist I	Posted Internally 5/22/2015



Financial Literacy

To date, staff has reached 290 attendees through face-to-face contact via community presentations. Staff continues to be confident that the goal to reach 300 consumers will be met before the end of the fiscal year.

This year marked the 8th anniversary of Financial Fitness Greater Austin (FFGA) Awareness week. During the past three months, staff met monthly to plan and coordinate details to ensure a successful event. This year there were 50+ classes taught during FFGA week.

In addition, staff partnered with the Alliance for Economic Inclusion (AEI) to host collaboration meetings and gain new FFGA membership. As part of AEI, staff had opportunities to give updates, make announcements, and convey the needs of FFGA. Specifically, with the Texas Financial Education Endowment grant cycle approaching, staff was able share information about the grant program, as well as talk about OCCC financial literacy educational opportunities. As the co-chair of FFGA, staff secured

space, speakers, and materials for the awards ceremony and coordinated with fiscal agents to request funding for committee members to provide class or participation incentives.

Accounting & IT Reports

Accounting

The accounting department worked with Garza and Gonzales during the Texas Financial Education Endowment audit in the month of May. This entailed running reports and submitting any information requested. The department has begun gathering data for preparation of the FY 16 Budget, as well as preparing spreadsheets for analysis.

Information Technology-Legacy Modernization

ALECS is in maintenance mode, performing all major database functions properly. Work continues to clean up old data and fix minor bugs. Requirements are being developed for additional functionality and process improvements. There have been major successes during pawn employee and pawn shop renewal, with the majority of licensees renewing online, prior to the due date.

The department's contracted consultant ended his engagement on June 4th, after assisting in a knowledge transfer to our new permanent Programmer, who has begun working in ALECS.

The agency plans to release the Statement of Work for the examination and complaint project early this summer, and will move quickly to award the contract and begin building the program.

Legal Department Report

Michael Rigby, General Counsel

June 2015

Enforcement Report

Pawnshop Employee – License Revocation

On February 2, 2014, Jose Luis Olvera, Jr., a pawnshop employee, disclosed a pawnshop customer's nonpublic personal information on a social media website. Mr. Olvera's unauthorized disclosure violated federal consumer privacy laws which are incorporated into the Texas Finance Code. The OCCC moved for revocation of Mr. Olvera's pawnshop employee license under Chapter 371 of the Texas Finance Code and Title 7, Chapter 85 of the Texas Administrative Code. On September 10, 2014, the OCCC issued a notice of hearing for revocation of Mr. Olvera's pawnshop employee license. The hearing was held on October 14, 2014, before Holly Compton-Noelke, Administrative Law Judge. On February 3, 2015, the ALJ issued a proposal for decision recommending the revocation of Mr. Olvera's pawnshop employee license. On March 17, 2015, Juan V. Garcia, pursuant to OCCC Delegation Order of March 4, 2015, adopted the recommendation of the proposal for decision and issued a final order to revoke Mr. Olvera's license. Mr. Olvera did not file a timely motion for rehearing with the OCCC. Therefore, the March 17 revocation order is now final.

Motor Vehicle Sales Finance – License Revocation

Dedek, Steve d/b/a S&L Auto Sales violated Chapter 348 of the Texas Finance Code by charging excessive public official fees and unauthorized GPS fees. S&L Auto Sales was unwilling or unable to refund the excessive and unauthorized fees, despite being instructed to do so in three separate examination reports. The OCCC moved for suspension of S&L Auto Sales motor vehicle sales finance license for violation of Chapters 348 and 349 of the Texas Finance Code and Title 7, Chapter 84 of the Texas Administrative Code. On April 10, 2015, the OCCC issued a notice of hearing for suspension of S&L Auto Sales' motor vehicle sales finance license. A hearing was set for May 26, 2015, before Holly Compton-Noelke, Administrative Law Judge. S&L Auto Sales did not wish to contest the alleged violations. On May 25, 2015, the OCCC issued an agreed order to revoke S&L Auto Sales' motor vehicle sales finance license and dismissed the scheduled hearing.

Administrative Rule Report

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

- An adoption of amendments providing updated guidelines on the use of discount points for property tax loans.
- A proposed new rule describing the OCCC's review of criminal convictions for residential mortgage loan originator applicants and licensees.
- A proposed new rule describing the OCCC's review of criminal convictions for debt management services provider applicants and registrants.

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

- A new rule to clarify notice requirements for a contested case hearing and allow the OCCC to informally dispose of contested cases by default.
- Amendments to update the procedures for plain language non-standard contract submission.
- Amendments to provide examination guidelines and recordkeeping requirements for credit access businesses.
- 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 May 31, 2015. Since April 1, 2015, the OCCC has completed the third 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 May 31, 2015, the OCCC has completed 14 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 May 31, 2015				
	FYTD 2015	**FY 2014**	**FY 2013**	**FY 2012**
Revocation / Suspension Actions				
Regulated Loan License	27	10	3	5
Pawnshop License	0	1	1	1
Pawnshop Employee License	2	1	2	1
Credit Access Business	1	4	0	1
Motor Vehicle Sales Finance License	1	4	3	1
Property Tax Loan License	0	4	0	0
Crafted Precious Metal Dealer	2	0	0	0
Total Revocation / Suspension Actions	**33**	**24**	**9**	**9**
Cease & Desist Actions				
Regulated Loan License	0	0	1	0
Pawnshop License	0	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	1	4	1	0
Motor Vehicle Sales Finance License	7	8	13	0
Property Tax Loan License	1	2	1	0
Crafted Precious Metal Dealer	3	0	0	0
Registered Creditor (Ch. 345)	0	0	1	0
Debt Management Services (Ch.394)	6	1	1	0
Credit Card Surcharge (Ch. 339)	0	0	0	0
Unlicensed Activity – Other Chapters	0	2	10	18
Total Cease & Desist Actions	**18**	**17**	**28**	**18**
Administrative Penalty Actions				
Regulated Loan License	1	121	144	103
Pawnshop License	2	6	9	6
Pawnshop Employee License	1	8	8	6
Credit Access Business License	105	56	52	0
Motor Vehicle Sales Finance License	51	88	112	85
Property Tax Loan License	7	18	12	12
Crafted Precious Metal Dealer	0	1	0	0
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	**167**	**298**	**337**	**212**
Total Enforcement Actions Closed	**218**	**339**	**374**	**239**

From April 1, 2015, to May 31, 2015, the OCCC:

- issued 71 final orders,
- opened 51 cases in order to assess administrative penalties,
- opened 5 cases in order to issue administrative injunctions,
- held 0 administrative hearings, and
- dismissed 2 administrative hearings.

The OCCC has 2 administrative hearings scheduled between June 1, 2015, and July 31, 2015.

Litigation

Ovation Lending LLC v. Finance Commission of Texas:

A group of property tax lenders has sued the Finance Commission and the OCCC, seeking to prevent enforcement of the commission's recently adopted rule at 7 Texas Administrative Code Section 89.601(d), which prohibits discount points for property tax loans. The plaintiffs argue that the commission exceeded its statutory authority, failed to give adequate notice of the rule amendment, and did not perform the required analysis of the impact on small businesses. The plaintiffs filed their petition on March 6, 2015, and the OCCC was served with it on March 11.

The commission and the OCCC have agreed to enter a temporary restraining order that restrains the commission and the OCCC from enforcing Section 89.601(d). The parties have also agreed that this order will be extended through August 5, 2015, and that a temporary injunction hearing will be set for August 4.

The full style of the case is *Ovation Lending LLC, Alamo Home Finance Inc., USPTL LLC, and Tax Advances LLC v. Finance Commission of Texas, Office of Consumer Credit Commissioner, and Leslie Pettijohn, in her Official Capacity as Commissioner of the Office of Consumer Credit Commission*. The case number is D-1-GN-15-000886, in the 353rd district court in Travis County, Texas.

Rowell v. Pettijohn:

Last year, 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 February 2015, the court granted the OCCC's motion to dismiss the lawsuit, holding that Section 339.001 is a regulation of pricing and economic conduct rather than speech, and that it is not void for vagueness. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (Feb. 4, 2015).

The plaintiffs have appealed the case to the Fifth Circuit Court of Appeals. The plaintiffs' brief is due on June 9, 2015. The OCCC's brief is due 30 days after the OCCC is served with the plaintiffs' brief, and the plaintiffs' reply brief is due within 14 days after they are served with the OCCC's brief. The OCCC is being represented by two divisions of the Office of the Attorney General: the Office of Solicitor General and the Financial Litigation, Tax, and Charitable Trusts Division.

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

Similar cases have been filed in New York, Florida, and California. The federal district courts in California and New York have struck down the credit card surcharge statutes in those states. *Italian Colors Rest. v. Harris*, No. 2:14-cv-00604-MCE-DAD, 2015 WL 1405507, 2015 U.S. Dist. LEXIS 39030 (E.D. Cal. Mar. 26, 2015); *Expressions Hair Design v. Schneiderman*, 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The federal district court in Florida upheld Florida's credit card surcharge statute. *Dana's R.R. Supply v. Bondi*, No. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The New York case has been appealed to the Second Circuit, which heard oral arguments on March 5. The Florida case has been appealed to the Eleventh Circuit, which is scheduled to hear oral arguments in June. The California case has been appealed to the Ninth Circuit.

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 two other cases, the court held that TILA does apply to property tax lenders and denied the lenders' motions to dismiss. *Thiery v. Texas Tax Solutions, LLC*, No. 5:14-cv-00940-HLH, 2014 WL 7447976, 2014 U.S. Dist. LEXIS 179763 (W.D. Tex. Dec. 19, 2014); *Torres v. Propel Financial Services, LLC*, No. 5:14-cv-01040-HLH (W.D. Tex. Jan. 22, 2015).

These three decisions have been appealed to the Fifth Circuit Court of Appeals. The Consumer Financial Protection Bureau filed an amicus curiae brief with the Fifth Circuit, arguing that TILA applies to Texas property tax lenders.

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 Municipal Ordinance Litigation:

Several credit access businesses (CABs) have sued cities, arguing that CAB ordinances are preempted under state law. Earlier this month, the Fort Worth court of appeals rejected a challenge to Denton's CAB ordinance, finding that the CAB had not demonstrated a sufficient harm to its property interests. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963, 2015 Tex. App. LEXIS 5723 (Tex. App.—Fort Worth June 4, 2015 no pet. h.) (mem. op.). This decision was based partly on a Dallas court of appeals decision from last year, which rejected a challenge to Dallas's CAB ordinance for similar reasons. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.). Other cases are pending in state district court, including *CBA Leasing, Ltd. d/b/a Power Finance of Tex. v. Board of Adjustment, City of Dallas*, No. DC-14-14964 (14th Dist. Ct., Dallas Co.) (filed Dec. 24, 2014); *Cash Station, Ltd. d/b/a Power Finance v. City of San Antonio*, No. 2014-CI-18131 (285th Dist. Ct., Bexar Co.) (filed Nov. 18, 2014); and *TitleMax of Texas, Inc. v. City of Austin*, No. D-1-GN-12-001780 (200th Dist. Ct., Travis Co.) (filed June 13, 2012).

Advisory Bulletins

From April 1, 2015, to May 31, 2015, the OCCC did not issue any advisory bulletins.

Interpretation Requests

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

Open Records Requests

From April 1, 2015, to May 31, 2015, the OCCC has processed and responded to 39 requests for information under the Texas Public Information Act, with one referral to the Office of the Attorney General.

Outline of 2015 Legislation

Matthew Nance, Deputy General Counsel

This outline summarizes the Texas Legislature's recently enacted legislation that affects the OCCC. All of these bills will go into effect on September 1, 2015, unless otherwise noted.

Bills amending the Texas Finance Code

SB 1075—Criminal history obtained by the OCCC:

The bill specifies that the OCCC may obtain criminal history information from the Department of Public Safety for license holders or applicants under the following chapters of the Finance Code: Chapter 180 (residential mortgage loan originators), Chapter 393 (credit access businesses), and Chapter 394 (debt-management providers). The bill also allows the OCCC to obtain criminal history information for an employee or volunteer of the OCCC, an applicant for employment with the OCCC, or a contractor or subcontractor of the OCCC. It provides that the OCCC may not release the information unless: (1) it is obtained from a fingerprint-based search, and (2) it is released on a court order, to the person who is the subject, or with the consent of the person who is the subject. The bill amends the criminal history provisions in Chapter 14 of the Finance Code to conform to Chapter 411 of the Government Code.

The agency intends to propose two rules to the Finance Commission relating to SB 1075, both providing standards for the OCCC's review of criminal convictions. One rule will apply to residential mortgage loan originators, and the other will apply to debt-management providers.

HB 1881—Private school credit-card-surcharge exemption:

This bill provides an exemption for accredited K-12 private schools from the credit-card-surcharge prohibition in Section 339.001 of the Finance Code. The bill applies to payment of private-school tuition by credit card, debit card, or electronic funds transfer. It allows the school to charge a service charge in an amount necessary to reimburse the school for its expenses. It requires the school to notify the cardholder of the charge before accepting payment.

The bill will go into effect immediately upon the governor's signature.

HB 831—Mortgage disclosure to surviving spouse:

This bill requires the mortgage servicer of a home loan to send loan documentation and outstanding balance information to the surviving spouse of a mortgage borrower within 30 days of receiving a request from the spouse. It requires surviving spouses to prove their status through affidavits and a death certificate.

SB 1296—Nonsubstantive corrections:

This bill provides nonsubstantive additions and corrections to several enacted codes. In particular, it amends Section 348.005 of the Finance Code, a provision on itemized charges, to harmonize two amendments to that section that the Legislature enacted in 2013.

Bills affecting state agency administration

HB 9—Employees Retirement System membership and contributions:

This bill eliminates the 90-day waiting period for membership in Employees Retirement System of Texas. State employees will become members on the first day they are employed. Additionally, this bill eliminates the tiered system for calculating deductions and replaces it with a flat rate of 9.5% of a member's annual compensation for services before September 1, 2017. The formula for deductions after September 1, 2017, is changed to incorporate 9.5% as a baseline.

HB 855—Agency web site compatibility:

This bill requires state agencies to ensure that their web sites are compatible with wireless communication devices and the most recent versions of the three most common internet browsers, as identified by the Department of Information Resources.

HB 966—State employee consumer-directed health plan:

This bill adds a subchapter to the Insurance Code creating an optional high-deductible health plan, including health savings accounts, for state employees and their qualified dependents. The premiums for the high-deductible plan would be part of the same pool as the current state employee health plan. The Employees Retirement System of Texas will determine the eligibility and required contributions of individuals and their dependents, and may adopt rules accordingly.

ERS will begin developing this plan starting September 1, 2015, and will provide eligible individuals with written information regarding the plan no later than July 31, 2016. Coverage under the plan will begin September 1, 2016. ERS will also conduct a study of the program and submit a report to the legislature no later than January 1, 2020.

HB 3736—Agency board conflicts of interest:

This bill requires governing board members of a state agency to disclose any conflict of interest in writing before the agency decides a matter. It prohibits a member from participating in a decision on a matter if the member has a conflict. These provisions do not apply to rule proposals or adoptions. In addition, the bill requires annual state-officer financial statements to disclose financial activity of separate and community property, certain contracts with governmental entities for the sale of at least $2,500 of goods or $5,000 of services, and sources of income that is not reported.

SB 20—State agency contracts:

This bill includes several requirements for state agency contracts. It requires state agencies to retain all contracts the agency enters until seven years after the contract is completed (and all issues from litigation, audit, administrative review, and other issues are resolved). The bill prohibits a state officer or employee who participated in procurement of a contract from accepting employment from the contractor within two years of ending service with the agency. It directs the state comptroller to adopt rules to determine contracting information that state agencies must report. It requires agency contract managers to document their use of the best value standard in making purchases. It amends the training requirements for agency purchasing personnel to include ethics, procurement-method selection, and purchasing technology. It requires agencies to review vendor performance and report it to the comptroller. It requires agencies to post statements of work on their web sites. It requires employees involved in procuring contracts to disclose potential conflicts of interest, and prohibits agencies from entering a contract if a board member, governing official, general counsel, or procurement director has a conflict. It requires agencies to develop contract reporting requirements for contracts over $1 million, verify compliance with laws and procedures for contracts over $5 million, and develop purchasing accountability and risk analysis procedures, which must be posted to the agency's web site.

SB 374—Agency participation in E-verify immigration status program:

This bill requires state agencies to participate in the E-verify program, operated by the U.S. Department of Homeland Security, to verify the authorization status of newly hired employees under federal immigration law.

SB 807—Military licensing fee exemption:

This bill requires state agencies to waive license application and examination fees for military service members or veterans whose military service, training, or education substantially meets all of the requirements for the license. The bill also requires agencies to waive application and examination fees for military service members, veterans, or military spouses who hold a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements in Texas.

SB 1267—Contested cases:

This bill amends several provisions of the Texas Administrative Procedure Act relating to contested cases before a state agency. The bill requires agencies to notify parties to contested case (or their attorneys) of a final decision or order by one of the following: personal service, email (if agreed to by the party), or first class, certified, or registered mail. The bill provides that a decision or order in a contested case is not final until the party or its attorney has received this notice. The bill extends the deadlines for filing a motion for rehearing and a response to a motion for rehearing. If an agency intends to rely on a statute or rule not previously referenced in a notice of hearing, and the agency has the burden of proof, the bill requires the agency to amend the notice at least seven days before the hearing.

SB 1877—Data use agreements:

This bill requires state agencies to develop data use agreements consistent with rules adopted by the Department of Information Resources. Agencies must ensure that employees handling sensitive information sign the agreements. If possible, the agency must provide cybersecurity awareness training. The agreements must be updated at least biennially, but may be modified at any time so as to accommodate best practices in data management.

Other bills of interest

HB 1933—Installment payments of delinquent taxes:

This bill amends the requirements for installment agreements between a taxing unit and a property owner to pay delinquent taxes. The bill specifies when the installments must be due if the delinquency date is in a month other than February. Current law requires a taxing unit to enter an agreement on request of a residential homestead owner who has not entered an agreement within the last 24 months, and provides that the agreement must extend for at least 12 months. The bill specifies that these two requirements apply to property owners who have been granted a homestead exemption. The bill removes the current requirement that the installments be equal. The bill makes minor changes to the text of the notice of delinquency that the taxing unit is required to use.

HB 2076—Possessory worker's liens:

This bill amends the requirements for possessory worker's liens on motor vehicles, boats, and boat motors. Current law allows a worker who repairs one of these items to retain possession of the item until the amount due under a contract is paid to the worker. The bill specifies that the lien is released when the worker receives the amount due or relinquishes possession of the item. The bill prohibits the worker from assigning the possession right to a third party in return for payment of any amount due. The bill prohibits the worker from selling the item until 31 days after the worker files a notice with the county tax assessor-collector.
This bill will go into effect immediately upon the governor's signature, except for the amended notice requirements, which apply only to transactions where the notice is provided to the assessor-collector on or after September 1, 2015.

HB 3987—School-based savings programs:

This bill allows school districts and charter schools to establish a school-based savings program for personal financial literacy and saving for college. Schools may partner with banks, businesses, nonprofit organizations, or other institutions to promote these issues. In connection with the program, a financial institution may offer general savings accounts or savings accounts dedicated for higher education.

This bill will go into effect immediately upon the governor's signature.

Rule Item/Purpose	Proposal Date	Adoption Date/Status
Property Tax Lenders - *Adopt Amendments* 7 TAC, Part 5, Chapter 89, §§89.207, 89.601 & 89.802 To provide guidelines for charging legitimate discount points in connection with property tax loans	04/17/15	Presented for Adoption 06/19/15
Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - *Proposed New* 7 TAC, Part 1, Chapter 2, §2.106 To implement Tex. Occ. Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for RMLO applicants and licensees under the OCCC's regulatory jurisdiction; Tex. Gov't Code, §411.095, as amended by Senate Bill 1075; and Tex. Fin. Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking a residential mortgage loan originator license	06/19/15	
Debt Management Services Providers - *Proposed Amendments & New* 7 TAC, Part 5, Chapter 88, §§88.102, 88.107, & 88.110 To implement Tex. Gov't Code, §411.095 and Tex. Fin. Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants to provide fingerprints; Tex. Fin. Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a registration, and describes the grounds for denying, suspending, or revoking a registration; and Tex. Occ. Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for debt management services provider applicants and registrants	06/19/15	
Administration - *Proposed New* 7 TAC, Part 5, Chapter 82, §82.5 To clarify the notice requirements for a contested case hearing and allow the OCCC to informally dispose of contested cases by default	08/21/15	
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 To update plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes	08/21/15	

Rule Item/Purpose	Proposal Date	Adoption Date/Status
Chapter 342, Plain Language Contract Provisions - *Rule Review* 7 TAC, Part 5, Chapter 90 To conduct standard 4-year review under Tex. Gov't Code, §2001.039, update plain language contracts to conform with federal TILA-RESPA forms, provide provisions for irregular transactions, and make technical corrections	08/21/15	
Rules for Credit Access Businesses - *Rule Review* 7 TAC, Part 5, Chapter 83, Subchapter B To conduct standard 4-year review under Tex. Gov't Code, §2001.039, provide definitions, streamline licensing provisions, specify recordkeeping and examination requirements, update disclosure forms, and make technical corrections	10/16/15	
Motor Vehicle Installment Sales - *Proposed Amendments* 7 TAC, Part 5, Chapter 84, §84.205 To provide more detailed reasonableness and submission requirements	12/18/15	
Rules for Crafted Precious Metal Dealers - *Rule Review* 7 TAC, Part 5, Chapter 85, Subchapter B To conduct standard 4-year review under Tex. Gov't Code, §2001.039, clarify definitions, and make technical corrections	12/18/15	
Licensing Streamlining Provisions - *Proposed Amendments* 7 TAC, Part 5, Chapters 83, 84, 85, 88, and 89 To streamline licensing procedures and provide regulatory burden reduction	TBD	

C. Office of Consumer Credit Commissioner

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

PURPOSE: In general, the purpose of the amendments is to provide guidelines for charging legitimate discount points in connection with property tax loans.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §§89.207, 89.601 and 89.802 without changes as previously published in the *Texas Register*.

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

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

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

The commission adopts the amendments to §§89.207, 89.601 and 89.802 without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2353).

In general, the purpose of the adopted amendments is to provide guidelines for charging legitimate discount points in connection with property tax loans. The amendments replace a portion of a previously adopted rule that prohibited discount points in §89.601(d), which appeared in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1068).

At the commission's meeting on April 17, 2015, individuals from the following organizations provided oral testimony supporting the proposal: Protect My Texas Property and the Texas Property Tax Lienholders Association. In addition, the commission received three written comments on the proposal from the following organizations and entities: the Law Firm of Daniel J. Young, PLLC; Sombrero Capital, LLC; and the Texas Property Tax Lienholders Association. One commenter supported the proposed recordkeeping and disclosure requirements, but opposed the prohibition on including discount points in the principal balance or funds advanced. The other two commenters were generally supportive of the amendments, although one of these supportive commenters suggested additional requirements for legitimate discount points, including bona fide discounts and additional disclosures. A more detailed analysis of the comments is included after the purpose discussion regarding §89.601(d).

The agency originally received informal pre-comments on property tax loan discount points at a stakeholder meeting held in September 2014. Stakeholders also provided official comments regarding property tax loan discount points in response to proposed rule amendments that appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484) and the December 26, 2014, issue of the *Texas Register* (39 TexReg 10122). The commission has considered these official comments and informal pre-comments in developing the current amendments.

I. Summary of adopted amendments

The amendments to §89.207, concerning Files and Records Required, add clause (x) to paragraph (3)(A) concerning the property tax loan transaction file. The amendments specify that a property tax lender must maintain written documentation of discount points offered to the property owner, including a written proposal that includes a contract rate without discount points and a lower contract rate based on discount points.

The amendments to §89.601, concerning Fees for Closings Costs, are contained in subsection (d). The amendments to §89.601(d) address 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 limit for property tax loan closing costs described by §89.601(c). 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.

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 described by subsection (c). 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 under Texas Finance Code, §302.101. New §89.601(d)(4) specifies that discount points must be paid by the borrower at or before closing of the loan, and that discount points may not be included in the funds advanced or principal balance. New §89.601(d)(5) specifies that a lender may not finance discount points through a promissory note or contract payable to the property tax lender or an affiliated business.

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

II. Purpose and justification

The amendments have three primary purposes. First, they help ensure that any discount points charged by a property tax lender are legitimate prepaid interest, rather than a disguised closing cost in violation of 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").

In addition, paragraphs (4) and (5) help ensure that property tax lenders comply with the limitation on funds advanced in Texas Tax Code, §32.06(e), which provides: "A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. 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." This provision distinguishes between interest that the property tax lender may charge and funds that the property tax lender may advance to the borrower. Funds advanced are expressly limited to the six items listed in the second sentence of §32.06(e). The interest that the property tax lender can charge is described in the first sentence of §32.06(e), and is not part of the funds advanced. There is no indication in §32.06(e) that a property tax lender may charge interest on its own 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). For this reason, discount points (as a form of prepaid interest) are not part of the funds advanced under Texas Tax Code, §32.06(e), and should not be included in the principal balance of the loan, as specified in paragraph (4). In addition, paragraph (5) specifies that a lender may not circumvent this requirement by entering into a promissory note or contract for the payment of discount points.

Third, the amendments ensure transparency in connection with discount points. By requiring a complete written disclosure of the contract rate and annual percentage rate with and without discount points, the amendments enable borrowers to make an informed decision before closing.

The amendments address three problems with discount points that were described in written comments on the December 26 re-proposal of the previous version of this rule.

First, the comments on the December 26 re-proposal revealed that certain property tax lenders have used discount points as disguised closing costs, rather than an option to obtain a lower interest rate. For example, one 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." Along the same lines, 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." In other words, certain property tax lenders are relying on discount points in order to compensate them for the costs incurred in closing a loan. 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. 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, e.g., Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 596 (Tex. 2013). The comments did not indicate that any property tax lenders have offered a borrower a clear statement of the option to obtain a higher interest rate, versus a lower rate with discount points.

Second, the comments on the December 26 re-proposal revealed that certain property tax lenders have included discount points in the principal balance of property tax loans, in violation of the limitation on funds advanced in Texas Tax Code, §32.06(e). For example, one commenter was affiliated with a property tax lender that has charged discount points, and objected to the prohibition on including discount points in the principal balance of a loan. This 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." Ten other commenters on the December re-proposal supported the prohibition on including discount points in the principal balance of a property tax loan. For example, one commenter supported "ensuring that prepaid interest is kept separate from interest bearing principal to avoid charging property owners interest on the prepaid interest."

Third, the comments on the December 26 re-proposal revealed that discount points for property tax loans can be confusing and not sufficiently transparent to borrowers. One 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." In the case of financed discount points, the property tax lender 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 addition, as discussed previously, the comments did not indicate that any property tax lenders have offered a borrower a clear statement of the option to obtain a higher interest rate, versus a lower rate with discount points.

III. Comments on proposed amendments

The commission received three written comments on the May 1 proposal containing the current amendments.

One commenter supported the rule, stating that although it would "prefer the prohibition of discount points altogether, we are in support of the proposed amendments, and believe the rules will ensure property tax loans are provided fairly and sensibly to property owners." The current amendments replace a portion of a previously adopted rule that prohibited discount points in §89.601(d). The commission believes that the current amendments provide sufficiently clear guidelines to address the discount-point-related problems discussed earlier.

One commenter supported the rule, stating: "I applaud your office's continuing efforts to protect consumers of property tax loans. The proposed amendments are reasonable and will not negatively impact my business." However, this commenter suggested additional requirements. First, the commenter suggested: "Discount point charges must be paid up-front." The commission has addressed this suggestion through new §89.601(d)(4), which requires discount points to be paid by the borrower at or before closing of the loan, and provides that discount points may not be included in the funds advanced or principal balance. Second, the commenter suggested that the "OCCC must demand customers receive fair and bona [fide] rate reductions from market rates," and that a "single discount point must have a minimum value of 25 basis points."

The commission believes that the 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. The commission declines to add further discount point calculation requirements for this adoption. Third, the commenter suggested that the rule should require the originator to remit any discount points to a subsequent lienholder, stating: "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 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. Fourth, the commenter suggested that all discount points should be subject to the $900 fee cap described in §89.601(c)(3), stating: "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(d)(2) partially addresses the 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. Fifth, the commenter 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 [about] 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." The commission believes that subsection (d)(1)(C) provides property owners with appropriate guidance about their options for discount points. The agency will continue to monitor this issue. The commission believes that a disclosure of the OCCC's contact information is unnecessary in the written proposal for discount points, because the borrower already receives this information under §89.504(a)(14) as part of the disclosure statement that must be provided to the borrower before closing.

One commenter supported the proposed recordkeeping and disclosure requirements, but opposed the prohibition on including discount points in the principal balance or funds advanced. The commenter argued that many borrowers are unable to pay for discount points up front, stating that "a property owner's ability to have quick access to cash, check or electronic funds transfer usually isn't part of why the need the transferees help. Many homeowners are already involved in a lawsuit with the taxing authorities--often facing imminent foreclosure. Some have found themselves in a bind after losing a job or with unexpected, urgent expenses. . . . [N]o matter how much a property owner wanted to utilize discount points--as expressly authorized by these rules--she would be prevented from doing so unless she had access to cash on hand." As discussed previously, discount points must be excluded from the principal balance and

funds advanced, in order to ensure that the property tax lender does not violate the limitation on funds advanced in Texas Tax Code, §32.06(e). For this reason, the commission disagrees with the commenter's suggestion to remove the prohibition on financing discount points. In response to the commission's statement that lenders could recoup costs of compliance by charging a higher rate of interest, the commenter also stated that the amendments would "provide a justification for the increase in industry interest rates." The commission disagrees with this comment. Property tax lenders are still free to offer lower interest rates than their competition. A property tax lender that currently offers financed discount points at lower-than-market rates could provide substantially the same benefit by offering an interest rate without discount points that is lower than competitors' rates. This approach would have the added benefits of ensuring that the discount points are not disguised closing costs, ensuring that the lender does not violate the limitation on funds advanced, and providing clearer, more transparent information to the borrower.

IV. Conclusion

The amended provisions in this adoption will apply only to loans made on or after the effective date of these rules, which is anticipated to be July 9, 2015.

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. The amendments help ensure that lenders comply with the limitations on interest, closing costs, and funds advanced in Texas Tax Code, §32.06(e). They also help ensure that lenders comply with Texas Finance Code, §351.0021(c)(2), which prohibits property tax lenders from charging any interest that is not expressly authorized under Texas Tax Code, §32.06. 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. Enforcement authority under Title 4 includes the authority to enforce Texas Tax Code, §32.06, as provided by Texas Finance Code, §351.006(a).

The amendments are also adopted 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 §32.06. By requiring discount points to be legitimate prepaid interest rather than disguised closing costs, the amendments help ensure that the charges imposed by the lender are reasonable.

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

§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) - (ix) (No change.)

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

(B) - (M) (No change.)

(4) - (9) (No change.)

§89.601. Fees for Closing Costs.

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

(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 and a corresponding annual percentage rate;

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

(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;

(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.

(4) All legitimate discount points must be paid by the property owner by cash, check, or electronic funds transfer before or at closing of a property tax loan. Discount points may not be included in the funds advanced described by Texas Tax Code, §32.06(e), or in the principal balance upon which interest is calculated.

(5) A property tax lender may not finance any discount points through a separate promissory note or contract, if the note or contract is payable to the property tax lender or to an affiliated business of the property tax lender.

[~~(d) Discount points. A property tax lender may not charge any discount points in connection with a property tax loan. A property tax lender may not use the term "discount point" to describe any fee or charge in connection with a property tax loan. This prohibition applies to all property tax loans, notwithstanding subsection (a).~~]

§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) [~~C~~] any other fees that are part of the total amount due under the property tax loan, with a specific description for each fee;

(10) - (13) (No change.)

(d) - (l) (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 June 19, 2015.

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

Sombrero Capital
4515 San Pedro Ave.
San Antonio, TX 78212

April 20, 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 consumers of property tax loans. The proposed amendments are reasonable and will not negatively impact my business.

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(s). 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. Detail who benefits from discount points. Companies who strictly originate loans must not benefit from fees generated through discount points. Prepaid interest is 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.

5. 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.

6. 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."

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
Sombrero Capital

From: Chris Creel [REDACTED]
To: "Laurie us>" <Laurie.Hobbs@occc.state.tx.us>, Leslie Pettijohn <Leslie.Pettijohn@occc.state.tx.us>
Date: 6/1/2015 6:03 PM
Subject: Comments to Rules Proposal 7 TAC 89.601

Dear Commissioner Pettijohn and Ms. Hobbs:

Please accept the following as my public comments to the OCCC's proposed amendments to §§89.207, 89.601, and 89.802 of the Texas Administrative Code Title 7, Part 5. As you know, I represent several licensed tax lien transferees who have submitted comments on prior iterations in this rulemaking process. The agency's rulemaking proposal published on May 1st in the Texas Register considers those prior comments, as well as my own. Without going through the prior comments redundantly, I appreciate your consideration of these comments.

The recordkeeping and disclosure requirement for legitimate discount points make perfect sense. Those rules are aligned with the agency's mission and statutory authority: (1) allow the customer to make an informed decision on matters within the agency's purview, and (2) ensure compliance with §32.06 of the Tax Code and Chapter 351 of the Finance Code. While the agency states that the primary purpose of these rules is to "ensure transparency in connection with discount points and to enable the borrower to make an informed decision before closing," the practical effect of these rules is much different.

The disclosures and recordkeeping do help a property owner avoid signing a contract without full knowledge of its implications; however, the agency must know that the requirement for a property own funding discount points "by cash, check, or electronic funds transfer before or at closing" will make most property owners' ability to use this option impossible no matter how much they know about it. A variety of circumstances may result in a property owner having delinquent property taxes on a home they want to keep.

After seeing almost 4000 of these transfers from origination to closing, I feel confident in my conclusion that a property owner's ability to have quick access to cash, check or electronic funds transfer usually isn't part of why the need the transferees help. Many homeowners are already involved in a lawsuit with the taxing authorities—often facing imminent foreclosure. Some have found themselves in a bind after losing a job or with unexpected, urgent expenses. Often, heirs realize after the death of a loved one that the property tax deferral taken out by the decedent doesn't mean that taxes weren't still accruing.

Even a property owner agreeing to the discount point option authorized by these rules after all the disclosures will be doing so doing so based on a long-term solution to a present financial hardship. Yet, no matter how much a property owner wanted to utilize discount points—as expressly authorized by these rules—she would be prevented from doing so unless she had access to cash on hand.

What is the result if the property owner doesn't have access to cash, check, or electronic funds transfer? I believe that answer lies in the agency's justification on the economic impact to the

small businesses that offer discount points:

Ultimately, the commission estimates that the impact on [small businesses offering discount points] to be minimal because they should be able to recoup these costs through other methods, such as charging a higher interest rate and ensuring that they are able to retain a portion of that interest rate.

In the end, a property owner is well aware of an option that most are unable to exercise. All that does is provide a justification for the increase in industry interest rates.

In addition, consider this implication of these rules to the following situation: A small originator is willing to offer a lower interest rate if discount points are paid by the property owner at or before closing. The homeowner sees the options available under the new disclosure rules and honestly wants to pay the discount points to secure the lower interest rate. Unfortunately, she is unable to bring the few hundred dollars needed to fund the points until the following morning and the next morning is July 1st. Unless the agreement closed, funded, and a check is postmarked that day, the taxing authority's contract with their collection attorneys means a 20% penalty will be added to the tax bill. These rules would result in the property owner being forced to choose between a 20% penalty tomorrow or substantially higher interest payments over the next five or ten years despite full compliance by the originator with these rules.

I don't believe that is the agency's intent and would ask the agency delete §89.601(d)(5) from the rules submitted to the Finance Commission for final adoption.

Very truly yours,

Chris Creel

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Texas Property Tax Lienholders Association

May 11, 2015

Laurie Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

Dear Ms. Hobbs,

Thank you for the opportunity to again provide comments regarding the proposed rule amendments regarding property tax lenders. While the association would prefer the prohibition of discount points altogether, we are in support of the proposed amendments, and believe the rules will ensure property tax loans are provided fairly and sensibly to property owners.

Please feel free to reference our previous letters to the OCCC, dated 9/5/14, 9/26/14, 11/3/14, and 1/26/15, regarding the entire rule amendment process. The TPTLA appreciates the opportunity to be involved in the process and supports all reasonable regulation of our industry.

Sincerely,

Monika Wilson

Texas Property Tax Lienholders Association
[REDACTED]

823 Congress Avenue, Suite 230 Austin, Texas 78701
Phone: (512) 479-0425 Fax: (512) 495-9031

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC §2.106, Concerning Denial, Suspension, or Revocation Based on Criminal History, for OCCC Residential Mortgage Loan Originators

PURPOSE: The purpose of the new rule is to implement Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for residential mortgage loan originator applicants and licensees under the OCCC's regulatory jurisdiction. The proposed rule also implements Texas Government Code, §411.095, as amended by Senate Bill 1075, as well as Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking a residential mortgage loan originator license.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve new 7 TAC §2.106 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment new 7 TAC §2.106.

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
§2.106. Denial, Suspension, or Revocation Based on Criminal History

The Finance Commission of Texas (commission) proposes new 7 TAC §2.106, concerning Denial, Suspension, or Revocation Based on Criminal History, for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC).

In general, the purpose of the proposed new rule is to implement Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for residential mortgage loan originator applicants and licensees under the OCCC's regulatory jurisdiction. The proposed rule also implements Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the OCCC. In addition, the proposed rule implements Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking a residential mortgage loan originator license.

Residential mortgage loan originators (RMLOs) are licensed in Texas under Chapter 180 of the Texas Finance Code. Section 180.054 currently authorizes the OCCC to collect criminal history record information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent. To provide consistency, SB 1075 amends Texas Government Code, §411.095 by adding Chapter 180 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a license with the OCCC under Chapter 180.

Proposed new §2.106 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of an RMLO license.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of an RMLO under the OCCC's jurisdiction. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being an RMLO, including the reasons the crimes relate to the licensed occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine

whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies crimes related to financial responsibility, character, or general fitness that may be used as the basis for a denial, suspension, or revocation action by the OCCC.

Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn has also determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of the proposal will be that the commission's rules will implement recent legislation and will provide better consistency across all licensees regulated by the OCCC. Additional public benefits are that the commission's rules will be more easily understood by licensees required to comply with the rules and the rules will be more easily enforced.

Any costs required are imposed by the Texas Legislature through the enactment of SB 1075, as well as the existing requirements in the Texas Occupations Code, and are not a result of the proposed new rule. For example, in order for the OCCC to properly review criminal history, RMLO applicants are required to pay fingerprinting fees to third parties. Some applicants and licensees may be required to obtain court documents or other evidence of criminal disposition, possibly incurring other fees. These costs are imposed by the statutory provisions and not by the proposed rule. Thus, aside from the costs required by amended and existing statutes, the OCCC does not anticipate any additional costs to persons who are required to comply with the new rule.

There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the new rule as proposed, other than effects imposed by amended and existing statutes.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Occupations Code, §53.025, which

authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license and any other criteria that affect the decisions of the licensing authority. The new rule is also proposed under Texas Government Code, §411.095, as amended by SB 1075, which authorizes the OCCC to obtain criminal history record information from the DPS that relates to a Chapter 180 applicant or licensee.

Additionally, the new rule is proposed under Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking an RMLO license. The new rule is also proposed under Texas Finance Code, §180.054, which authorizes the OCCC to collect criminal history information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent, and under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements for conducting background checks and other activities necessary for participation in the NMLS.

The statutory provisions affected by the proposed new rule are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, Chapters 180, 342, 347, 348, and 351.

§2.106. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant's character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

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

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

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license,

if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensed residential mortgage loan originator, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Crimes related to financial responsibility, character, or general fitness. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). Crimes that relate to financial responsibility, character, or general fitness include the following:

(1) fraud, misrepresentation, deception, or forgery;

(2) breach of trust or other fiduciary duty;

(3) dishonesty or theft;

(4) money laundering;

(5) assault;

(6) violation of a statute governing lending of this or another state;

(7) failure to file a required report with a governmental body, or filing a false report; or

(8) attempt, preparation, or conspiracy to commit one of the preceding crimes.

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

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

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

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

(3) a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(4) a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(5) any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of

this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

Certification

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

Issued in Austin, Texas on June 19, 2015.

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §88.102 and §88.107, and New 7 TAC §88.110, Concerning Criminal History Information, for Debt Management Services Providers

PURPOSE: The purpose of the proposal is to implement the following provisions: Texas Government Code, §411.095, as amended by Senate Bill 1075, relating to criminal history record information obtained by the OCCC; Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints; Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration; and Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for debt management services provider applicants and registrants.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC §88.102 and §88.107, and new 7 TAC §88.110 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC §88.102 and §88.107, and new 7 TAC §88.110.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 88. Consumer Debt Management Services
§§88.102, 88.107, & 88.110

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §88.102, concerning Filing of New Application, and §88.107, concerning Fees. The commission also proposes new 7 TAC §88.110, concerning Denial, Suspension, or Revocation Based on Criminal History, for debt management services providers.

In general, the purpose of the proposal is to implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). The proposal also implements Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. The proposal implements Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. In addition, the proposal implements Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for debt management services provider applicants and registrants.

Debt management services providers are registered in Texas under Chapter 394 of the Texas Finance Code. SB 1075 amends Texas Government Code, §411.095 by adding Chapter 394 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a registration.

The proposed amendments to §88.102, concerning Filing of New Application, add paragraph (9) to subsection (b), describing which individuals must submit fingerprints as part of a registration application in order to comply with Texas Finance Code, §14.152, as amended by SB 1075. In particular, paragraph (9)(A) explains that each principal party must provide a set of fingerprints.

The proposed amendments to §88.107, concerning Fees, add a subsection explaining that the applicant must pay a fee to a party designated by DPS for processing fingerprints.

Proposed new §88.110 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a debt management services provider registration.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the registered occupation of a debt management services provider. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities

of being a debt management services provider, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a registrant, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or registrant unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies offenses involving moral turpitude that may be used as the basis for a denial, suspension, or revocation action by the OCCC. This provision is based on Texas Finance Code, §394.204(i)(1), which authorizes the OCCC to deny an application based on offenses related to moral turpitude.

Subsection (e) explains that the OCCC will revoke a registration on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of the proposal will be that the commission's rules will implement recent legislation and allow the OCCC to perform a more complete review of debt management services provider applicants. Additional public benefits are that the commission's rules will be more easily understood by registrants required to comply with the rules and the rules will be more easily enforced.

Any costs required are imposed by the Texas Legislature through the enactment of SB 1075, as well as the existing requirements in the Texas Occupations Code, and are not a result of the proposal. For example, in order for the OCCC to properly review criminal history, debt management services provider applicants will be required to pay fingerprinting fees to third parties. Some applicants and registrants may be required to obtain court documents or other evidence of criminal disposition, possibly incurring other fees. These costs are imposed by the statutory provisions and not by the proposal. Thus, aside from the costs required by amended and existing statutes, the OCCC does not anticipate any additional costs to persons who are required to comply with the proposal.

There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the proposed rule changes, other than effects imposed by amended and existing statutes.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov.

To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Government Code, §411.095, as amended by SB 1075. The rule changes are also proposed under Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. In addition, the rule changes are proposed under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license or registration and any other criteria that affect the decisions of the licensing authority.

Additionally, the rule changes are proposed under Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. The rule changes are also proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, §14.152 and Chapter 394, Subchapter C.

§88.102. Filing of New Application.

(a) (No change.)

(b) The application must include the following required forms and filings. All questions must be answered.

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

<u>(9) Fingerprints.</u>

<u>(A) The applicant must provide a complete set of legible fingerprints for each person meeting the definition of "principal party" in §88.101 of this title (relating to Definition). All fingerprints must be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.</u>

<u>(B) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (3) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.</u>

<u>(C) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.</u>

(D) For individuals who have previously been registered by the OCCC and principal parties of entities currently registered, fingerprints are not required to be provided with the initial application if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, the OCCC may require individuals and principal parties previously registered with the OCCC to submit a new set of fingerprints.

(E) For individuals who have previously submitted fingerprints to another state agency, fingerprints are still required to be submitted for use by the OCCC under Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

§88.107. Fees.

(a) (No change.)

(b) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(c) [~~(b)~~] Registration amendments. A fee of $25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider, inactivating an active registration, or relocating the registered provider location.

(d) [~~(c)~~] Registration duplicates. The fee for a registration duplicate is $10.

(e) [~~(d)~~] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §88.103 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, attorney's fees, or investigative costs, if applicable.

(f) [~~(e)~~] Annual assessments. An annual fixed fee not to exceed $430 is required for each registered debt management services provider.

§88.110. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete registration application, including all required fingerprints, and pays the fees required by §88.107 of this title (relating to Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

(1) information about arrests, charges, indictments, and convictions;

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

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

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

(c) Crimes directly related to registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, and collecting charges in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a registrant and may be grounds for denial, suspension, or revocation.

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Offenses involving moral turpitude. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of or found civilly liable for an offense involving moral turpitude, as provided by Texas Finance Code, §394.204(i)(1), (k)(1)-(2). Offenses involving moral turpitude include the following:

(1) forgery;

(2) embezzlement;

(3) obtaining money under false pretenses;

(4) larceny;

(5) extortion;

(8) conspiracy to defraud; and

(9) any other similar offense or violation.

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

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

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

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

(3) errors or incomplete information in the registration application, as provided by Texas Finance Code, §394.204(h);

(4) a fact or condition that would have been grounds for denying the registration application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §394.204(k)(1)-(2); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §394.204(i)(3), (k)(9).

Certification

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

Issued in Austin, Texas on June 19, 2015.

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

D.

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: June 2, 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		5/31/2015		8/31/2015	
Industry Profile *(# / Assets in billions)*												
# Banks	283	$202.6	273	$225.2	266	$228.4	265	$237.0	262	$241.7		
# Trust Co. (1)	21	$27.0	21	$40.5	21	$41.3	21	$96.9	21	$98.0		
# FBA/FBB	10	$82.1	10	$93.6	10	$92.0	10	$87.1	9	$90.3		
Examinations Performed												
Banks	145		125		24		27		*			
Trust Co.	35		32		9		7		*			
FBA/FBB	6		2		0		1		*			
Bank CAMELS *(# / %)*												
1	125	44.2%	128	46.9%	126	47.4%	127	47.9%	126	48.1%		
2	136	48.1%	132	48.3%	130	48.9%	128	48.3%	127	48.5%		
3, 4, & 5	22	7.8%	13	4.8%	10	3.7%	10	3.8%	9	3.4%		
Non-Rated	0	-	0	-	0	-	0	-	0	-		

* Third quarter 2015 performance measure data hasn't been finalized but will be provided in the next summary.

(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. As of June 2, 2015, problem banks totaled 8. Aided by improved economic conditions, problem bank numbers have returned to pre-recession levels, which we consider to be a range between 3% and 5% of the total number of institutions. Entities with significant oil and gas exposure will be closely monitored in the coming months as a protracted period of low oil prices could result in additional asset quality problems for some institutions and lead to an increase in the number of problem banks.

Administrative/Enforcement Actions *(Number outstanding as of the date indicated)*			**FY 2015**			
	8/31/2013	**8/31/2014**	**11/30/2014**	**2/28/2015**	**5/31/2015**	**8/31/2015**
Banks - Safety and Soundness						
Formal	12	5	3	3	3	
Informal	26	21	21	19	17	
Banks - Bank Secrecy Act (BSA)						
Formal	0	0	1	1	1	
Informal	3	1	0	0	0	
Banks - Information Technology (IT)						
Formal	0	0	0	0	0	
Informal	2	4	3	2	2	
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0	0	
Informal	1	1	1	1	1	
Total Administrative/Enforcement Actions						
Formal	12	5	4	4	4	
Informal	32	27	25	22	20	
Total	**44**	**32**	**29**	**26**	**24**	

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** *(YTD through 04/30/2015)*
Commercial Banks (All / DOB Only)	80% / 72%	96% / 96%
IT	89% / 87%	97% / 98%
Trust	94% / 94%	100% / 100%
Foreign Banks *(FRB)*	100%	100%
Trust Companies *(DOB)*	97%	92%
IT	93%	100%

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

Division Highlights

- Oil and Gas Risk Analysis: As reported previously, division staff conducted a special risk assessment of Texas banks that are active in oil and gas lending. This assessment was performed to better gauge the impact that declining oil and gas commodity prices will have on the Texas banking system. In January, several banks were contacted to discuss issues relating to their oil and gas exposure. As a follow-up, a questionnaire was sent to 22 institutions in January and 37 banks in March. Responses to the questionnaires have been reviewed and will be used to determine if on-site examinations or additional follow-up is necessary.
- Special Operations and Conferences:
    - Commissioner Cooper and other staff members participated in the Independent Bankers Association of Texas (IBAT) "Day at the Capitol" held on April 7, 2015.
    - Deputy Commissioner Bacon participated in a regulator/legal panel at the RMA Texas 2015 Spring Conference in San Antonio on April 9, 2015.
    - Commissioner Cooper and other staff members attended the Texas Bankers Association (TBA) Annual Convention held in Austin from April 15 – 17, 2015.
    - Director Purdom participated in a banking panel before the Texas A&M University Banking Program students in College Station on April 20, 2015.
    - Deputy Commissioner Bacon provided welcoming remarks for the Financial Fitness Greater Austin Award Ceremony held in Austin on April 22, 2015.
    - On April 23, 2015, Commissioner Cooper testified before the Financial Institutions and Consumer Credit Subcommittee of the U.S. House of Representatives on behalf of CSBS. In his testimony, Commissioner Cooper discussed the increasing regulatory burden placed on community banks and the concept of regulatory right-sizing, a process by which state regulators aim to supervise an institution in a manner appropriate for its size, complexity, and risk profile.
    - Review Examiner Wu participated in testing ETS-SAGE (Supervisory Application Generating Exams), which is a new software capable of generating our examination reports. ETS-SAGE is a collaborative effort among CSBS, the FDIC, and the Federal Reserve Bank. This new program will allow the Department to digitize the entire examination process, including packaging digital work papers and the final report. Testing took place in Washington, D.C. from April 27 to May 15, 2015.
    - Director Robinson gave a presentation about the trust industry and trust regulatory environment at the TBA's Trust School in San Antonio on April 30, 2015.
    - Director Purdom participated in a Texas A&M Banking Program event in College Station on May 1, 2015.
    - Commissioner Cooper participated in a regulatory panel at the TBA's Legal Conference in Bastrop on May 8, 2015.
    - Commissioner Cooper and Director of IT Security Examinations Hinkle participated in a cybersecurity webinar in Austin on May 12, 2015.

- Commissioner Cooper spoke before the Tarrant County Bankers Association in Fort Worth on May 13, 2015.
- Regional Directors from the four regional offices met at the Austin Headquarters Office on May 13, 2015, primarily to discuss staffing, budgeting and policy issues.
- Senior staff members participated in Critical Thinking Training at the Austin Headquarters Office on May 14, 2015.
- Commissioner Cooper and Directors Purdom, Reyer and Rodriquez participated in the CSBS State-Federal Supervisory Forum held in San Francisco from May 26 – 29, 2015. Commissioner Cooper was named Chairman Elect of the CSBS Board of Directors at this meeting. Commissioner Cooper also gave an update on conditions in Texas relating to oil and gas exploration and the effect of the recent downturn in commodity prices on the Texas banking system.

- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs outstanding.

Federal Programs	**Troubled Asset Relief Program** *(TARP)* as of 05/13/2015	**Small Business Lending Fund** *(SBLF)* as of 03/31/2015
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed ***($ in millions)***	$2,837.7	$255.7
Number of Banks with Outstanding Funds	1	11
Total Amount Outstanding ***($ in millions)***	$11	$253.8

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities DBF

Date: June 2, 2015

Subject: Summary of the Corporate Division Activities

Corporate Activities	Applications and Notices Processed							
Entities	**FY2012**	**FY2013**	**FY2014**	3Q14	4Q14	1Q15	2Q15	3Q15
***Banks and Bank-related (holding companies, etc.)**	205	197	271	59	78	45	57	*
Foreign Banks	7	1	0	0	0	0	1	*
Trust Companies	7	11	13	8	2	3	2	*
MSBs	18	21	23	5	3	7	4	*
PCSEAs	7	3	11	1	3	0	1	*
CVEs	5	4	3	0	0	0	3	*
Cemetery Brokers	-	-	4	1	0	0	2	*
Other (Use of Name)	44	67	41	13	12	10	12	*
Totals	293	304	366	87	98	65	82	*

	Background Checks Completed							
Entities	**FY2012**	**FY2013**	**FY2014**	3Q14	4Q14	1Q15	2Q15	3Q15
#Banks and Bank-related (holding companies, etc.)	76	71	111	17	6	4	16	*
Foreign Banks	0	0	0	0	0	0	0	*
Trust Companies	14	8	10	8	0	8	0	*
MSBs	199	130	108	22	14	43	29	*
Other	1	1	0	0	0	0	0	*
Totals	290	210	229	47	20	55	45	*

*Third quarter fiscal year 2015 data has not been finalized and will be provided in the next summary

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

Entities/Activities	Application and Notices Under Review (as of May 31, 2015)
*Banks and bank-related (holding companies, etc.)	18
Foreign Banks	0
Trust Companies	1
MSBs	16
PCSEAs	1
CVEs	0
Cemetery Broker	0
Other (Use of Name)	2
Totals	38

Division Highlights

- The volume of filings received year-to-date in 2015 is down slightly from the same period in 2014. Year-to-date bank and trust related filings are down while MSB related filings are up as compared to last year.

- Chartering, Conversion, and Merger Activity – The following transactions consummated in the third quarter of the 2015 fiscal year:
    - *Banks*
        - Preston State Bank, Dallas, merged with and into Guaranty Bank & Trust, N.A. , Mount Pleasant
        - Oglesby State Bank, Oglesby, merged with and into affiliate The First National Bank of McGregor, McGregor
        - Vintage Bank, Waxahachie, merged with and into InterBank, Oklahoma City, Oklahoma
    - *Trust Companies*
        - Westwood Trust, Dallas, completed its merger acquisition of Woodway Financial Advisors, A Trust Company, Houston

- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings:
    - Corporate Analyst Xazel Garcia participated in monthly Money Transmitter Regulators Association (MTRA) Licensing Committee call on May 11, 2015.

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits

Date: June 1, 2015

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2015							
Entity	**FY2013**		**FY2014**		**1st**		**2nd**		**3rd**		**4th**	
Industry Profile (# / Assets (billions))												
MSB	135	$96.2	136	$96.0	141	$96.4	142	$96.4	143	$96.4		
PFC	389	$3.3	381	$3.4	386	$3.4	386	$3.6	385	$3.6		
PCC	244	$275.8	242	$286.6	242	$291.4	242	$293.5	242	$297.0		
CB	-	-	4	n/a	4	n/a	6	n/a	6	n/a		
PCSEA	11	n/a	11	n/a	11	n/a	11	n/a	11	n/a		
CVE	3	n/a	3	n/a	3	n/a	2	n/a	2	n/a		
Examinations Performed												
MSB		94	93		28		23		*			
MSB Limited Scope		1	0		0		0		*			
MSB Accepted other State		14	6		0		3		*			
PFC		254	295		59		59		*			
PFC Limited Scope		8	10		1		1		*			
PCC		177	179		44		60		*			
PCC Limited Scope		6	6		0		0		*			
Ratings (# / %) Assigned to All Regulated Entities												
1	278	37%	319	43%	316	43%	335	46%	*	*		
2	362	48%	355	48%	367	50%	348	48%	*	*		
3,4, & 5	114	15%	66	9%	54	7%	46	6%	*	*		
Noncompliance with Examination Priorities (Past Due)												
MSB	9		15		9		5		*			
PFC	41		1		3		3		*			
PCC	31		4		5		2		*			
Enforcement Actions												
MSB	2		3		1		4		3			
PFC	7		1		2		2		4			
PCC	6		0		0		0		0			
PCSEA	0		0		0		0		0			

NOTES:
PCC $ amounts reflected in the millions.
Limited scope examinations do not receive a rating.
*Third quarter fiscal year 2015 data has not been finalized and will be provided in the next summary.

Division Activities:

PFC/PCC Financial Examiners met in Round Rock the week of April 27th to discuss current events in the industry and to receive additional training on performing examinations and submitting compliant examination reports.

On April 29th, the Commissioner entered into an Agreed Order with Shaw's Funeral Home, Inc. (Shaw), Bowie, Texas, canceling their prepaid funeral permit. On May 1st, the Department took custody of the 11 outstanding trust funded contracts and $38,244 in related funds. Shaw's is now closed and is unable to service its contracts. The Department has notified all contract holders and in the near future will begin the process of bidding out the contracts to a successor funeral home.

On May 4th, Director Reese gave a presentation on perpetual care regulations to the members of the Texas Cemeteries Association (TCA) during their 2015 Annual Convention in Ft. Worth, Texas

On May 12th, the Commissioner entered into a Consent Order with Ronald R. Ritter (Ritter). Ritter owns the Heartfield-Ritter Funeral Home in Hearne, Texas and the Bremond Funeral Home in Bremond, Texas. The Commissioner found that Ritter had misappropriated $94,689.00 in funds paid to him by 14 individuals for prepaid funeral benefits from 2005 to 2014. The Consent Order requires Ritter to pay restitution, perpetually prohibits him from selling prepaid funeral benefits, and orders him to pay a penalty of $14,000.00 to the Department.

A Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held on May 14th. The Council ratified Trust Guaranty Fund claims totaling $12,000.38 related to Tom G. Walker Funeral Home, Coleman, Texas, a claim totaling $1,895.00 related to Washington Memorial Funeral Home, Dallas, Texas, and a claim totaling $2,600.00 related to Pruitt's Mortuary, Inc., Houston, Texas.

On May 18th, the Commissioner entered into a Consent Order with Intellipayment, LLC, New York City, NY, an unlicensed money transmitter. Since at least 2012, the company has been conducting bill payment money transmission (MT) business in Texas without the required license. The Consent Order required the company to pay an administrative penalty of $43,780 to the Department and to cease and desist any and all money transmission for any new customers in Texas until the required MT license is granted by the Department.

On May 19th, the Commissioner entered into a Second Consent Order (SCO) with Belinda Allee and James R. "Randy" Allee (Allee) owners of the Callaway-Allee Funeral Home in Crockett, Texas. The SCO was based on the Commissioner's finding that the Allees sold and received funds for ten additional prepaid funeral benefits policies that were not properly surrendered to the Department related to the First Consent Order dated September 11, 2014. The SCO required the Allees to pay an additional $35,000 to the Department as an administrative penalty. The total amount of penalties assessed for both Consent Orders against the Allees for misappropriating prepaid funeral funds totaled $155,000. Furthermore, all of the prepaid funeral contracts sold by the Allees were ultimately funded or the funds were refunded to the purchaser.

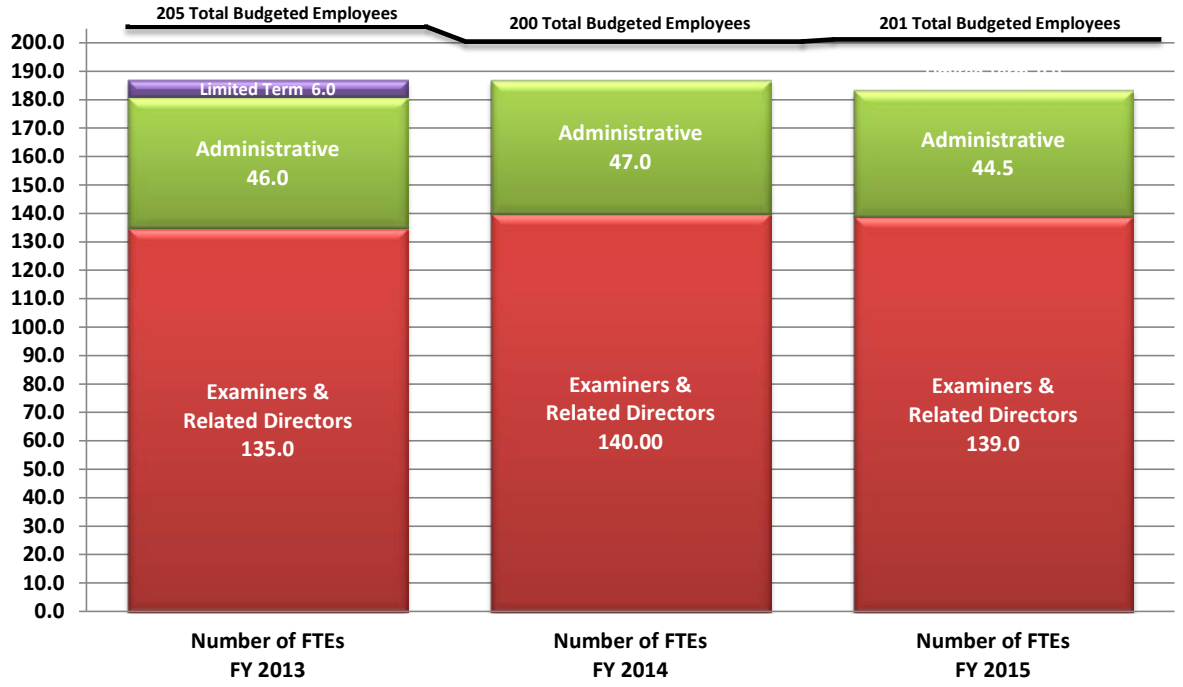
On June 2-4, Deputy Commissioner Newberg will attend the Annual Southwest Border Anti-Money Laundering Alliance Conference in Tempe, Arizona. The purpose of the program is to enhance and better coordinate investigations and prosecutions of money laundering along the United States/Mexico Border Area.

On June 3rd, Director Reese will give a presentation on prepaid funeral contract regulations to the members of the Texas Funeral Directors Association's (TFDA) during their 2014 Annual Convention in Galveston. Director Reese will also staff a booth at the convention which provides an additional forum to communicate changes and other important information to the industry.

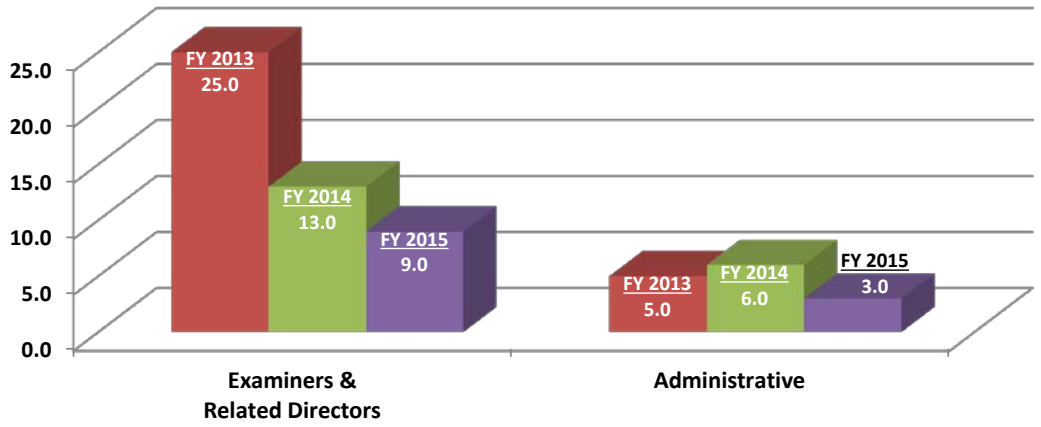
On June 8-10, Directors Reese and Rodriguez will attend the Annual Money Laundering & Financial Crimes Conference hosted by the Office of the Attorney General in Austin, Texas. The conference is designed to support the efforts of state and local law enforcement officials and analysts engaged in financial crime and money laundering investigations.

Texas Department of Banking

Employee Data for Fiscal Years 2013, 2014 and 2015 as of 5/31/15

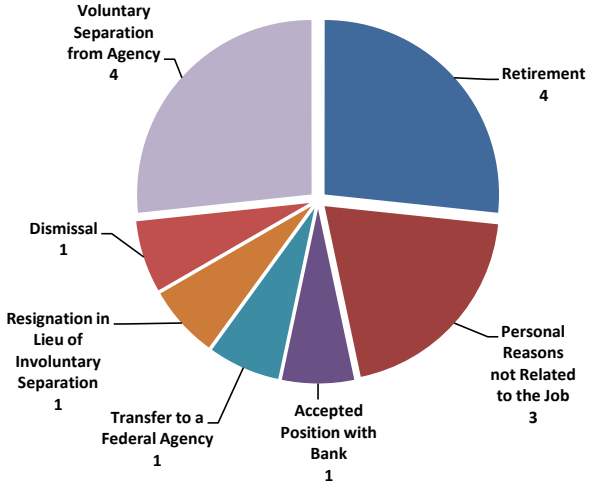


New Hire Data for Fiscal Years 2013, 2014 and 2015

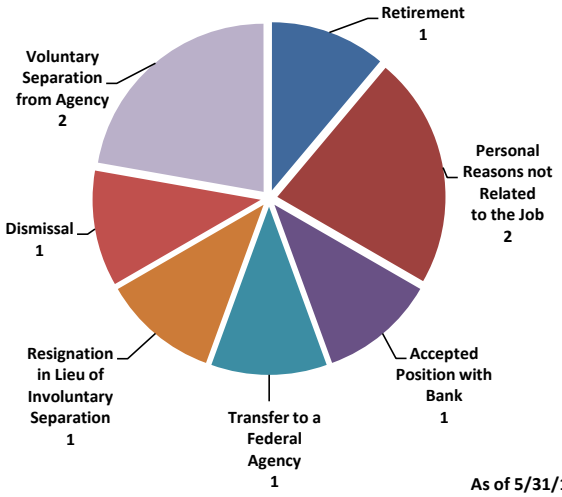


FY 2015 Employee Turnover Reasons

All Employees
15 Resignations



Financial Examiners Only
9 resignations



As of 5/31/15

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING
2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 /877-276-5554
www.dob.texas.gov

To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support

Date: June 1, 2015

Subject: Summary of the Strategic Support Division Activities

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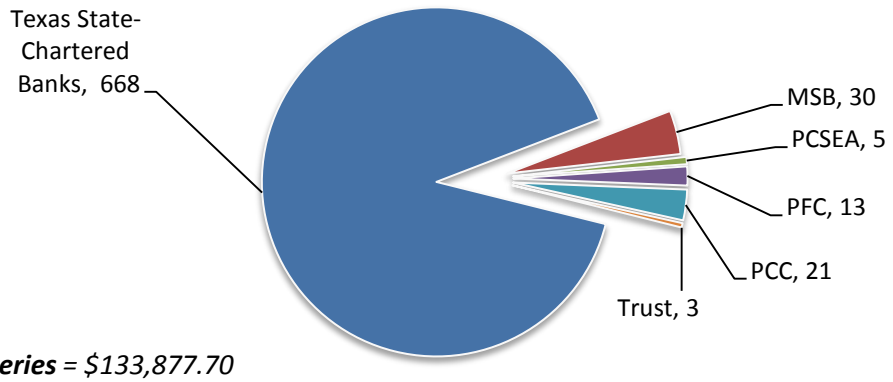
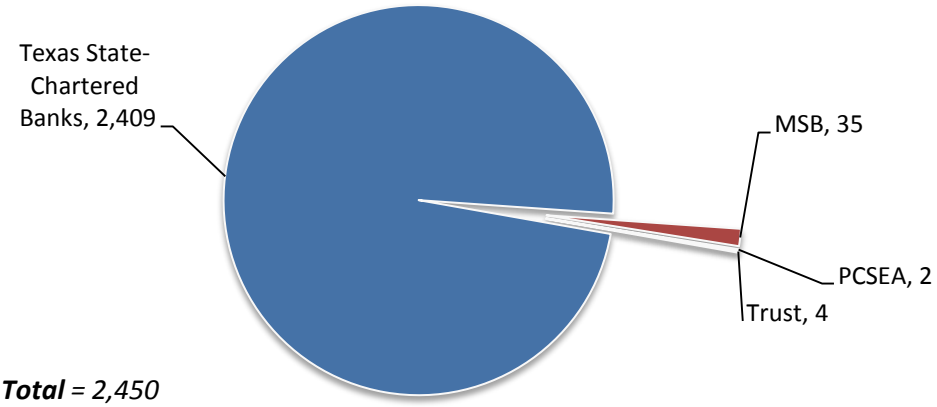
Complaints on Regulated Entities
September 2014 - April 2015



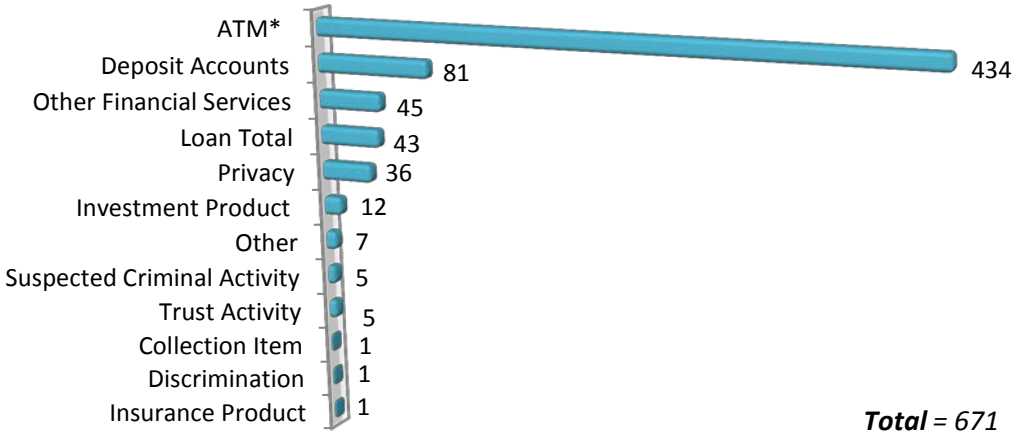
Recoveries *= $133,877.70*
Total *= 740*

Inquiries on Regulated Entities
September 2014 - April 2015



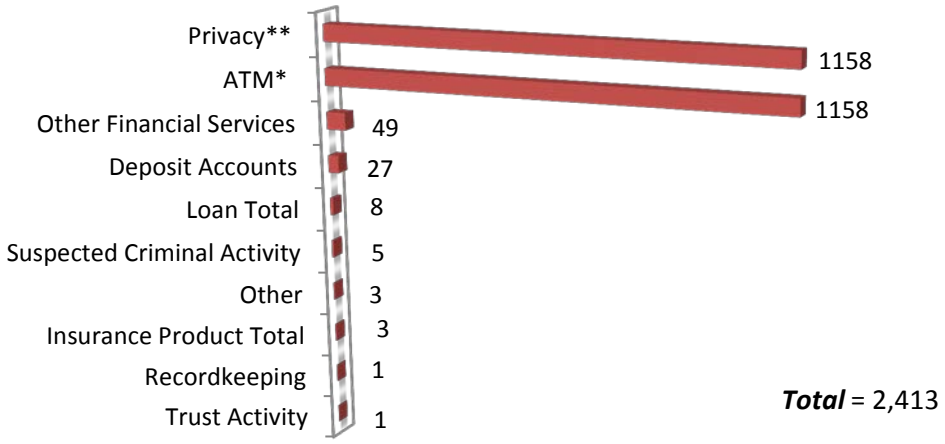
Total *= 2,450*

State-Chartered Banks and Trust Companies
Complaints by Type
September 2014 - April 2015



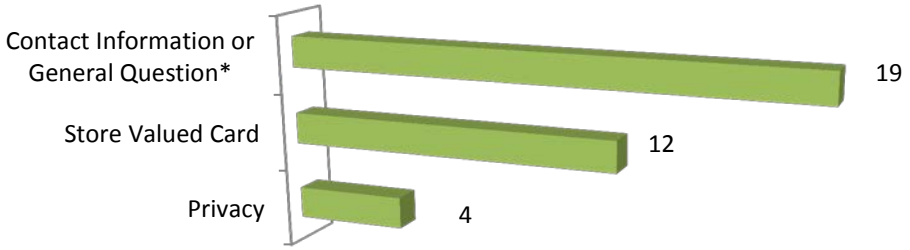
** Activity related outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they were unable to get through to a representative.*

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



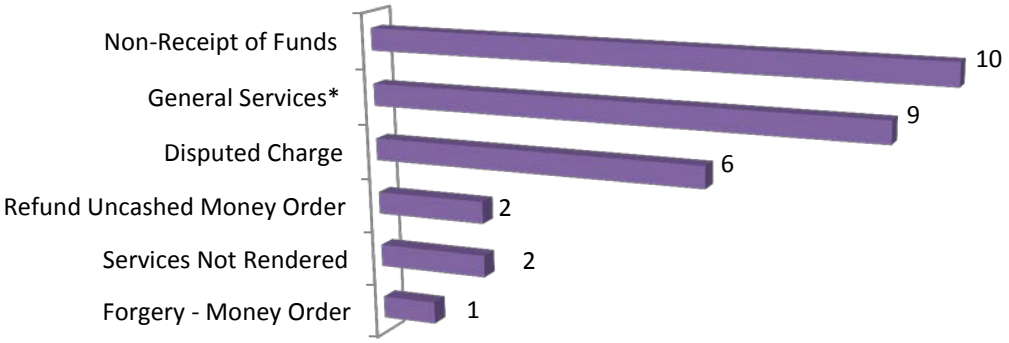
***High activity related to annual privacy notice containing the Department's contact information.*
** Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.*

Money Services Businesses
Inquiries by Type
September 2014 - April 2015



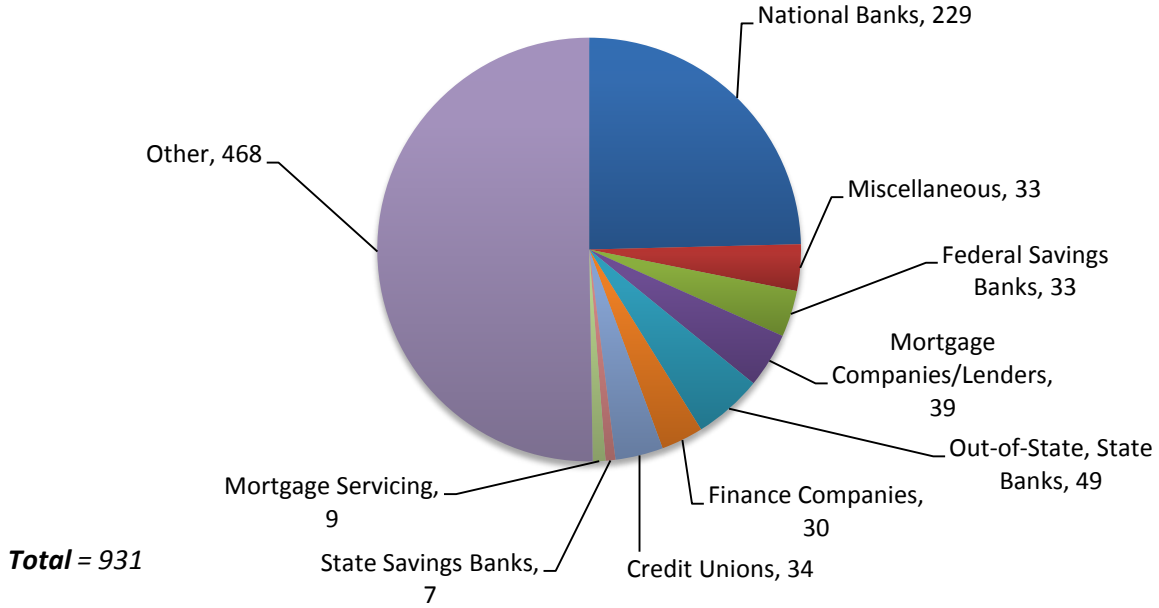
Total: 35

Money Services Businesses
Complaints by Type
September 2014 - April 2015



Total: 30

Complaints and Inquiries Against Nonregulated Entities
September 2014 - April 2015



Average Number of Days to Close a Complaint

Type	Sept. 2014 – April 2015
State-Chartered Banks	13
Trust	7
PCSEA	3
PFC/PCC	33
MSB	45

CANS Activity
January 1, 2011 – May 31, 2015

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	239	1,677
Texas State-Chartered Savings Banks	30	54
Federal Savings Banks	10	283
State Credit Unions	161	1,184
Federal Credit Unions	229	1,231
National Banks	165	620
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	67
Total	**849**	**5,116**

Bank Examination Testing System (BETS) Activity

	FY 2012	FY 2013	FY 2014	FY 2015 Sept. - May
Beginning Balance of FE3's	27	20	16	14
Number of Candidates Passing Each Phase				
I. General Knowledge	6	3	5	8
II. Loan Analysis	5	8	1	2
III. Panel	4	10	2	4
IV. Test Bank	3	11	1	4
Ending Balance of FE 3's	20	16	14	19

Promotions				
From FE3A to FE3B	6	3	5	8
From FE3B to FE4 ***(Commissioned Examiner)***	3	9	2	4

Other Divisional Items:

- The Department hosted a financial education webinar on May 28, 2015 relating to the FDIC Money Smart for Young People and Banking on Kids.
- The Department is holding a one day open forum event on June 10, 2015 in Austin, Texas for state-chartered banks to discuss general issues affecting community banks and the current Community Banking survey.
- The Texas Department of Banking 2014 Annual Report is available on the website. Hard copies will be mailed in late June.

Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 /877-276-5554
www.dob.texas.gov

Memorandum

TO: **Finance Commission Members**

FROM: **Catherine Reyer, General Counsel**

DATE: **June 1, 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 was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4 affirming the Commissioner's order. The cemetery owner has filed notice of intent to appeal the order to the Third Court of Appeals, but we have instructed our AG representative to attempt to negotiate a settlement for monthly payout of the penalty amount.

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. SB 656 by Eltife was signed by the Governor and became effective on May 15. This new legislation will allow the Commissioner to consider filing a petition in district court to modify the terms of the perpetual trust fund in order to facilitate a potential change in ownership of the cemetery and removal from perpetual care status.

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. Following review and approval by the Department and the OAG, the receiver entered into an agreed settlement on March 13 with two of the defendants that will bring an estimated $732,000 into the estate for distribution to harmed consumers. Upon discovering that several of the properties were the subject of lawsuits for unpaid property taxes, the receiver renegotiated the settlement terms to include receipt of an additional property, resulting in a net gain to the estate of approximately $10,000. On May 18, the district court entered judgment against the remaining defendants, jointly and severally, for more than $9 Million. The receiver has now begun discovery to find additional assets to satisfy the judgment.

Contested Case Hearings

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 surrendered its license and the case was dismissed.

In re eDeposit Corporation, Docket No. BM-1504-15-058(DW). eDeposit is alleged to have engaged in the business of money transmission without a license, processing 59 transactions for customers in Texas totaling $141,499.21 from January 2014 to November 2014. The Department issued an Order to Cease and Desist Activity on March 11, 2015. Following eDeposit's request, hearing has been set for June 10, 2015.

Orders

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

- Order No. 2015-009, dated 4/7/2015; Consent Order, Escrow Hill Limited and Administration Services LLC, Auckland, NZ and Westminster, CA
- Order No. 2015-010, dated 4/29/2015; Agreed Order Canceling Permit, Shaw's Funeral Home, Inc., Bowie, TX
- Order No. 2015-011, dated 5/12/2015; Consent Order, Ronald R. Ritter Owner of Heartfield-Ritter Funeral Home and Bremond Funeral Home, Hearne, TX
- Order No. 2015-012, dated 5/18/2015; Consent Order, IntelliPayment LLC, New York, NY
- Order No. 2015-013, dated 5/19/2015; Consent Order, Belinda Neel Allee and James R. Allee, owners of Callaway-Allee Funeral Home, Crockett, TX

In addition, the following order became final and unappealable:

- Order No. 2015-008, dated 3/18/2015; Order to Cease and Desist Activity, Mercy/McGowan Funeral Home, Jacksonville, Texas

Legislation Influencing DOB Regulated Entities
84th Legislative Session, 2015

High Interest Bills

HB 483 – State bullion depository (effective upon signature unless vetoed)

- Establishes a state depository agency for precious metal bullion and specie, as a division of the State comptroller's office
- Provides for the appointment of an administrator by the State comptroller
- Authorizes the comptroller to promulgate rules for the establishment of fees, service charges and penalties to be charged to account holders; such fees are to be deposited in the general revenue fund
- Authorizes the comptroller to adopt rules establishing exchange rates, accounting procedures, and standards for acceptable form and weight of bullion and specie
- Requires the comptroller to submit an annual report to the governor on the condition and operations of the depository
- Requires DOB to implement a licensing and reporting regime for depository agents, and perform examinations; grants DOB rulemaking authority with respect to licensure

HB 1626 – Banking development districts (effective 9/1/15 unless vetoed)

- Requires the finance commission to administer and monitor a banking development district program to encourage the establishment of branches in underserved areas
- Requires rulemaking to consider current availability of banking services, need for services in the proposed district, economic viability and commercial development in the proposed district
- Allows a local government to apply for establishment of a proposed development district
- Allows a financial institution to apply to open a branch in the proposed development district
- Requires the finance commission to act on such applications within 120 days
- Allows a local government or the comptroller to designate a financial institution to be a banking district depository, specifying a maximum amount that may be kept on deposit, and may consider the economic benefit in calculating yield rates
- Establishes mirror provisions for credit unions

HB 3536 – Appointment of agency commissioners (effective 9/1/15 unless vetoed)

- Provides that DOB and SML commissioners are appointed by a majority of Finance Commission members

HB 3555 – Banking enforcement procedures (effective 9/1/15 unless vetoed)

- Allows the commissioner to dispose of matters by consent order, agreed settlement, or default
- Clarifies enforcement authority of department to pursue enforcement actions against subsidiaries and holding companies of state banks and state trust companies
- Allows for an automatic prohibition or removal order against persons convicted of felonies in connection with crimes that involve financial institutions, dishonesty, or breach of trust

SB 656 – Perpetual care cemeteries (effective 5/15/15)

- Allows the commissioner to petition a court to modify or terminate a perpetual care fund in the event a perpetual care cemetery has become unable or unwilling to fulfill the requirements
- Upon hearing such a petition, allows the court to transfer all or part of a perpetual care fund to a nonprofit corporation, municipality, or other appropriate person who is willing to maintain the cemetery
- Establishes procedures and deadlines for emergency orders against perpetual care cemeteries

SB 875 – Trust company regulation (effective 9/1/15)

- Amends the definition of insolvency to mean having equity capital of less than 50% of restricted capital
- Increases from 40% to 50% the amount of restricted capital that trust companies must maintain in liquid assets
- Modifies timing of exams of trust companies to mirror that for banks and streamlines annual certification requirements
- Increases from $1 Million to $2 Million the minimum restricted capital required to form a new state trust company
- Provides for confidentiality of statements of condition and income for exempt trust companies
- Expands the definition of family for purposes of establishing an exempt trust company to individuals related within the 7th degree of a common ancestor, and includes other persons such as former spouses, stepchildren, and foster children

SB 899 – Money service businesses (effective 9/1/15)

- States that armored cars are only exempt from money transmission requirements if they are limited to transportation of currency between persons and their financial institutions or between different locations of the same person
- Establishes the security for currency exchange operators that conduct business through other than strictly face-to-face transactions to be the greater of $2,500 or 1% of the operator's projected total annual dollar volume of currency exchange business, up to $1 Million
- Allows for prosecution of an offense to be brought directly by a district attorney in the county where the offense took place

Other bills of interest

HB 705 – Financial institution account access (effective 9/1/15)

- Allows an heir or other interested person to petition a court to require a financial institution to release information concerning the balance of a decedent's account under certain conditions

HB 831 – Disclosure of home mortgage information (effective 9/1/15 unless vetoed)

- Requires mortgage servicers to provide a surviving spouse, within 30 days of request, information concerning outstanding mortgage balances

HB 1628 – Savings promotion raffles (effective 9/1/15 unless vetoed)

- Allows financial institutions to conduct a raffle in which each chance of winning a designated prize is distributed upon deposit of a minimum amount in a savings account

HB 1881 – Private school payment processing fees (effective 9/1/15 unless vetoed)

- Allows a private school to charge a fee for use of a credit or debit card, or an electronic funds transfer, not to exceed an amount sufficient to cover the cost of the transaction

HB 2207 – Foreclosure sale on oil & gas leases (effective 1/1/16 unless vetoed)

- Provides that an oil or gas lease remains in effect after foreclosure of a mortgage; right to proceeds of the lease pass to the purchaser of the foreclosed property, unless certain conditions are met

HB 2391 – Stored value cards (effective 9/1/15 unless vetoed)

- Requires seller of prepaid card to refund balances of less than $2.50 to consumers in cash

HB 2394 – Compelled production of customers' bank records (effective 9/1/15)

- Allows a financial institution to avoid production of requested records unless the requestor pays the associated costs or posts a bond

HB 3190 – Trustee decisions (effective 9/1/15 unless vetoed)

- Exempts from liability (except in cases of wilful misconduct) a trustee who acts in accordance with the direction of an advisor

HB 3901 – Repossession of aircraft (effective 9/1/15 unless vetoed)

- Allows a repossession agent to file a petition for a writ of assistance which authorizes a peach officer to assist and protect the agent during repossession of an aircraft

SB 462 – Revocable deed transfers (effective 9/1/15)

- Allows an individual to transfer interest in real property through a revocable transfer on death deed (TODD)
- Provides requirements for contents, notice, use and effects of TODDs

SB 641 – Debit card surcharges (effective 9/1/15)

- Transfers provisions of Finance Code relating to debit card surcharges to Business and Commerce Code
- Provides for penalties for violation of debit card surcharge ban
- Designates the Office of the Attorney General as the agency to enforce the debit card surcharge provisions

SB 860 – Business transactions (effective 9/1/15)

- Clarifies business owner liability
- Adds conditions for terms of merger plans
- Revises requirements formation and governing documents and shareholder agreements
- Establishes procedures for handling defective corporate acts

SB 900 – Texas Windstorm Insurance Association (effective 9/1/15 unless vetoed)

- Authorizes the appointment of an administrator to oversee the operations of the Association
- Requires the Department of Insurance to conduct a study of the voluntary windstorm and hail insurance market in the seacoast region; establishes a depopulation program to encourage transfer of policies to the voluntary market
- Reduces the amount of public securities that may be issued on behalf of the catastrophe reserve trust fund
- Prohibits recoupment of increases in assessments through surcharges or premium tax credits, but allows surcharges if needed to repay public securities
- Authorizes issuance of Class 3 public securities
- Modifies composition of the TWIA board
- Provides for alternative risk financing mechanisms
- Authorizes the comptroller to invest excess trust fund balances

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Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments) in its entirety, specifically Subchapter A (Lending Limits) comprised of §§12.1-12.12; Subchapter B (Loans) comprised of §§12.31-12.33; Subchapter C (Investment Limits) comprised of §§12.61 and 12.62; and Subchapter D (Investments) comprised of §12.91.

Notice of the review of Chapter 12 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2423). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments).

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts), specifically Subchapter A (Contract Forms) comprised of §§25.1-25.9; and Subchapter B (Regulation of Licenses) comprised of §§25.10-25.14, 25.17-25.19, 25.21-25.25, 25.31 and 25.41.

Notice of the review of Chapter 25 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2423). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts).